



Department of
Design and
Construction

Request for Proposals

Project
RIKERSPMC, Program
and Project Management
Services for Design Build
Program for The New
York City Borough Based
Jail System, Citywide.

PIN
8502019CR0001P

Pre-Proposal Conference
Friday, October 12, 2018

Submission Deadline
Thursday, November 1, 2018

Bill de Blasio
Mayor

Lorraine Grillo
Commissioner

Thomas Foley, P.E.,
CCM, ENV SP
Deputy Commissioner
Public Buildings



NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF PUBLIC BUILDINGS
REQUEST FOR PROPOSALS
FOR PROGRAM AND PROJECT MANAGEMENT SERVICES FOR DESIGN-BUILD
PROGRAM FOR
THE NEW YORK CITY BOROUGH-BASED JAIL SYSTEM
CITYWIDE

PROJECT: RIKERSPMC
PIN: 8502019CR0001P
EPIN: 85019P0004

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SECTION I. TIMETABLE**A. RFP ISSUANCE**Pre-Proposal Conference

A **pre-proposal conference** will be held on **October 12, 2018 at 10:00AM** at DDC Headquarters, located at 30-30 Thomson Avenue, Atrium, Long Island City, New York 11101 (entrance on 30th Place). Attendance is strongly encouraged, but not mandatory, to propose on the contract described in this RFP.

B. SUBMISSION DEADLINE:

The proposer shall deliver the Proposal, on or before **4:00 PM on Thursday, November 1st, 2018**, in a clearly marked envelope or package.

The Proposal shall consist of FOUR separate clearly marked, sealed packages containing the following:

- (1) Technical Proposal (1 original and 6 copies, and 1 electronic version saved as a PDF on a clearly marked compact disk (CD) or a clearly marked USB Flash Drive with the name of the firm).
- (2) Doing Business Data Form (1 original),
- (3) Schedule B: M/WBE Utilization Plan (1 original)
- (4) Fee Proposal (Attachment 6) (1 original).

Proposals shall be hand-delivered to the contact person at the location listed below. Proposals received after the applicable due date and time prescribed in the RFP are late and will not be accepted except at the discretion of DDC pursuant to the applicable section of the City Procurement Policy Board Rules.

**Department of Design and Construction
30-30 Thomson Avenue, 1st Floor, Contracts Section
Long Island City, NY 11101**

NOTE: Proposers are held responsible for ensuring that the RFP response package is received at the location listed above by the deadline. Proposers are warned not to rely on signed delivery slips from their messenger services. Occasionally packages are delivered to the School Construction Authority ("SCA"), which is located in the same building as DDC and the packages are not forwarded to the DDC Professional Contracts Section in a timely manner. Entrance to DDC is on 30th Place. DDC's entrance is NOT on Thomson Avenue, despite the fact that DDC's address has a Thomson Avenue street address.

C. INQUIRIES

All inquiries must be directed ONLY to the contact person(s) listed below. In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers known to have downloaded the RFP. All addenda will be available on DDC's website at <http://ddcftp.nyc.gov/rfpweb/>, as well as at <https://www.ddcanywhere.nyc/DesignBuild/>. It is the proposer's responsibility to check the website regularly for any updates and addenda to this solicitation. In order to receive

email notifications regarding this solicitation, proposers must register and download this RFP at <http://ddcftp.nyc.gov/rfpweb/>

Contract Manager: **Anna Zardiashvili and Hemwattie Roopnarine**
 Email: ZardiashviliA@ddc.nyc.gov **AND** ramnarah@ddc.nyc.gov

D. ADDENDA

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the addendum to the Technical Proposal. All addenda shall become a part of the requirements for this RFP. In addition to the individual signed addenda, proposals submissions should also contain a signed copy of Attachment 7, Acknowledgement of Addenda.

E. RFP SCHEDULE

The following is the estimated timetable for receipt, evaluation, and selection of proposals. This is only an estimate and is provided to assist responding firms in planning. Please note that the dates and times may be changed at DDC's discretion, as the needs of DDC change.

Estimated Procurement Timeline	
RFP Issued	October 1, 2018
Pre-Proposal Conference	October 12, 2018
Proposal Due	November 1, 2018
Top Ranked Firms Notified of Proposal Presentations, if required	On or about December 17, 2018
Proposal Presentations Date, if required	On or about January 7, 2019
Fee Negotiations Commence with Top Ranked Firm	On or about January 15, 2019, if Proposal Presentations are scheduled. On or about December 17, 2018, if no Proposal Presentations are scheduled
Expected Notice of Contract Award	Approximately March 2019

SECTION II. SUMMARY OF THE REQUEST FOR PROPOSALS

A. GENERAL

The New York City Department of Design and Construction (“DDC”), Public Buildings Division, is seeking a Program Management Consultant (“PMC”) to provide services for the Program and Projects described in this RFP. Program management services are required for the development and implementation of a Design-Build program for the New York City Borough Based Jails System (the “Design-Build Program”), as well as project management services for at least four (4) separate Design-Build projects (the “Projects” or individually, the “Project”). DDC is managing this Design-Build Program on behalf of the New York City Department of Corrections (“DOC”). The selected PMC will be required to provide all services necessary and required to implement and manage the Design-Build Program and for the inspection, management, coordination and administration of each Project, from commencement of the attached contract through substantial completion, final acceptance and close-out of all Projects. **DDC is not interested in receiving proposals from entities that do not have Design-Build experience.**

Please note that the PMC selected pursuant to this RFP will be expressly precluded from proposing on and participating in any and all future solicitations related to the Projects, including, but not limited to, the Design-Build solicitations. Subconsultants may be precluded from proposing on and participating in any and all future solicitations related to the Projects, including, but not limited to, the Design-Build solicitations; however, that decisions will be made on a case-by-case basis at a date closer to the specific Design-Build related procurement.

B. BACKGROUND OF THE PROGRAM AND PROJECTS

The intent of the Design-Build Program is to oversee, supervise and coordinate design and construction of at least four (4) new state of the art correctional facilities in New York City as part of an initiative to close the Rikers Island Jail Complex. The new facilities will be borough-based, rather than centralized on Rikers Island, and will house approximately 1500 inmates each.

1. To aid the City’s objectives, New York State passed the New York City Rikers Island Jail Complex Replacement Act (the “Act”), providing the City with authority to procure and enter into design-build contracts for the design and construction of the new correctional facilities. A copy of the Act is attached to this RFP, and it can also be obtained here: <https://legislation.nysenate.gov/pdf/bills/2017/S7509C>.
2. The PMC will be hired to provide its expertise in program and project management services in developing and managing the Design-Build Program and each Project. The design and construction of borough-based jails in New York City is an extremely complex undertaking requiring experienced and creative professionals skilled in a variety of disciplines.

C. OBJECTIVES OF THE DESIGN-BUILD PROGRAM AND PROJECTS

1. The PMC will be responsible for furnishing of all labor, materials, and equipment together with all work incidental thereto necessary or required to establish and execute a cost effective and efficient Design-Build Program. The services of the PMC will generally consist of providing expert professional program and project management, and related support services, for the Design-Build Program during its planning and design and construction phases, inclusive of project closeout. The program management support services will include but are not limited to: program and project management support; management of multi-disciplined professional and technical staff; documentation and reporting; program and project level scheduling and resource allocation analysis, program status and progress monitoring, budgeting, cost analysis and project controls. More specifically, the PMC will support the City with managerial, technical, clerical and administrative staff as required.
2. DDC recognizes that design-build is fundamentally different from the design-bid-build system that DDC utilizes in other programs. The design-build project delivery system requires a different method of procuring and managing design and construction services and a new way of doing business for DDC. DDC anticipates deviating from current policies and procedures in key areas to better meet the unique needs and challenges of design-build projects, including but not limited to alternative policies and procedures for payment requisitions, change orders and contract modifications, and dispute resolution. Without limitation, the PMC will immediately be tasked with quickly developing a design-build program for

DDC that complies with the Act, reflects industry best practices, and distinguishes the Design-Build Program from “business as usual”.

3. The PMC’s Program and Project Management Plans must establish systems for coordinating and managing multiple design-build projects. The PMC’s systems should be accessible to City personnel and City vendors procured to provide design and construction related services, including design-builders. Policies and procedures developed by the PMC, and technologies selected by the PMC to implement such policies and procedures, should be designed, or selected, with user experience in mind and should not burden City personnel or other vendors with unnecessary steps or confusing or incomplete direction.
4. The public review process – the Uniform Land Use Review Procedure (“ULURP”) – is underway for the four (4) Projects currently anticipated to be part of the Design-Build Program. For information about the ULURP process, and about the proposed locations and scope development for each Project, please visit: <https://a002-cegraccess.nyc.gov/cegr/ProjectInformation/ProjectDetail/13546-18DOC001Y#b>
Information about the currently anticipated Projects is not necessary to submit a successful proposal.

D. JOINT VENTURES AND OTHER CONSULTANT RELATIONSHIPS

Proposals may be submitted by joint ventures. There is no minimum requirement for the proportion of work by either of the two joint venture parties. Joint ventures must carry the required insurance either as policies written specifically for the joint venture entity, or by using their existing single entity policies with endorsements written for the joint venture activity.

DDC does not recognize the corporate configuration wherein one company is “in association with” or is “an affiliate of” another. Relationships between two or more firms shall be either as joint venture or prime consultant/subconsultant. In the event that a proposal is received wherein two or more firms are described as being "in association with" each other, DDC will treat the relationship as one of prime consultant/subconsultant (s). The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms will be relegated to Exhibit A, which lists any subconsultants.

E. COST ESTIMATE AND CONTRACT TERM

The term of the Contract shall commence as of the date set forth in the Notice to Proceed and shall remain in effect until Final Acceptance of all required construction work for the Projects and completion of all required PMC services for the Design-Build Program and Projects. The anticipated time for completion of all required services is set forth in Exhibit A of the attached Contract. The estimated cost of the required design-build work for each individual Project is in excess of \$1 Billion, with a total value of Design-Build contracts awarded under the Design-Build Program in excess \$4 Billion

F. INSURANCE

Requirements for insurance that must be provided by the PMC and/or its subconsultants are specified in Exhibit A of the attached Contract. The cost of all insurance is deemed included in payments to the PMC, as set forth in the Contract. The Proposer is advised to review such insurance requirements.

G. PAYMENT PROVISIONS

Payments for all required services for the Design-Build Program and Projects shall be in accordance with Article 7 of the attached Contract.

1. The PMC shall be paid for staffing expenses for individuals identified in the approved Staffing Plan as assigned PMC personnel. Staffing expenses shall be calculated based on direct salary rates for specified individuals, subject to a Multiplier. The PMC shall not be entitled to payment for staffing expenses for (1) any Contract Executive(s), and/or (2) any individual not included in the approved Staffing Plan.
2. DDC reserves the right to institute an Award Fee payment program to reward exceptional performance by the PMC of all services required. Such program, and the sums payable thereunder, will be entirely within the discretion of the Commissioner. If an Award Fee is instituted, DDC will reward behavior in

accordance with performance expectations determined and set forth in an award fee plan issued by the Commissioner, in its sole discretion.

SECTION III. SCOPE OF WORK AND CONTRACT CONDITIONS

A. SCOPE OF SERVICES

The services required of the PMC are described in detail in Exhibit D of the attached Contract. The PMC is advised to review the attached Contract and its exhibits carefully before submitting its proposal. In summary, the PMC will be required to perform services under the following categories:

1. Program Implementation
The PMC will develop and implement a design-build program customized to meet the Design-Build Program Objectives.
2. Architectural, Engineering, Procurement and Related Services
The PMC, through its duly licensed and qualified personnel or subconsultants, will provide such architectural, engineering, and other professional services necessary to coordinate and manage the successful completion of all Projects. DDC does not anticipate the need to develop bridging documents.
3. Project Controls Services
The PMC will provide all project control functions necessary for proper administration of the Design-Build Program and Projects.
4. Project Administration
The PMC will act to facilitate successful completion of all Projects and will provide all project administration services necessary and required for the inspection, management, coordination and administration of each Project, including the oversight of all day-to-day activities, such that the required design and construction work is properly executed, commissioned, and completed in a timely fashion and conforms to the requirements of the design and construction or design-build contract(s) and to good design and construction practices.

B. PROGRAM OFFICE

The PMC will be responsible for providing a Program Office in compliance with Exhibit G of the attached contract. An allowance for the Program Office is set forth in Exhibit A of the attached Contract, and will be payable in accordance with Article 7 and Exhibit G of the attached Contract.

C. CONTRACT PROVISIONS

The services to be provided by the Consultant and all standards of performance applicable to the required services are set forth in the form of contract, attached hereto and incorporated herein as part of this RFP. Any firm awarded a contract as a result of this RFP will be required to sign a contract containing the City's contract provisions, in substantially the form they appear in the attached Contract. However, DDC may be open to negotiating some terms and conditions of the Contract. The proposer is advised to carefully review the contract in its entirety before submitting a proposal. Any proposed changes to the Contract terms and conditions must be submitted with the proposer's Technical Proposal.

D. STAFFING PLAN

The PMC shall be required to provide personnel for the Design-Build Program and Projects in accordance with the Staffing Plans approved by the Commissioner. Such Staffing Plans must include the individuals identified by the PMC as Key Personnel in its Proposal, as well as other non-Key PMC personnel necessary for the Design-Build Program and Projects.

E. COMPLIANCE WITH IRAN DIVESTMENT ACT OF 2012

Pursuant to State Finance Law Section 165-a and General Municipal Law Section 103-g, the City is prohibited from entering into contracts with persons engaged in investment activities in the energy sector of Iran. Each proposer is required to complete the attached Bidders Certification of Compliance with the Iran Divestment Act, certifying that it is not on a list of entities engaged in investments activities in Iran created by the Commissioner of the NYS Office of General Services. If a proposer appears on that list, the Agency/Department will be able to award a contract to such proposer only in situations where the proposer is taking steps to cease its investments in Iran or where the proposer is a necessary sole source. Please refer to Attachment 2 for information on the Iran

Divestment Act required for this solicitation and instructions on how to complete the required form and go to <http://www.ogs.ny.gov/About/regs/ida.asp> for additional information concerning the list of entities.

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

F. PARTICIPATION BY MINORITY OWNED AND WOMEN OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

If the contract resulting from this Request for Proposals will be subject to M/WBE participation requirements under Section 6-129 of the Administrative Code of the City of New York, as indicated by the inclusion of Schedule B – M/WBE Utilization Plan (Attachment 8) and the Participation Goals indicated in Part I thereof, proposers must complete the Schedule B – M/WBE Utilization Plan and submit it with their proposals. Please refer to the Schedule B – M/WBE Utilization Plan and the Notice to All Prospective Contractors (Attachment 7) for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms. If the proposer intends to seek a full or partial waiver of the Participation Goals on the grounds described in Section 10 of the Notice to All Prospective Contractors, including but not limited to, proposer's intention to use its own forces to perform any or all of the required contract work would result in a failure to attain the Participation Goals, the proposer must request and obtain from the Agency a full or partial waiver of the Participation Goals (M/WBE Utilization Plan, Part III) in advance of proposal submission and submit the waiver determination with the proposal. Please note that if a partial waiver is obtained, the proposer is required to submit a completed Schedule B-M/WBE Utilization Plan based on the revised Participation Goals in order to be found responsive.

Note: As fully explained in Attachment 8, if you are planning to request a waiver of the Participation Goals, the waiver must be submitted to the Agency at least seven calendar days prior to the proposal due date and time in order to be considered.

G. COMPLIANCE WITH LOCAL LAW 34 OF 2007

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this proposal, and should do so in a separate envelope. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

H. WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

Local Law Nos. 30 and 33 of 2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, the Whistleblower Protection Expansion Act, protect employees of certain City contractors from adverse personnel action based on whistleblower activity relating to a City contract and require contractors to post a notice informing employees of their rights. Please read Attachment 10, the Whistleblower Protection Expansion Act Rider, carefully.

I. SUBCONTRACTOR COMPLIANCE NOTICE

The selected vendor will be required to utilize the City's web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment 11, the subcontractor compliance notice as it relates to competitive solicitations.

J. COMPLIANCE WITH HIRENYC AND REPORTING REQUIREMENTS

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

K. PAID SICK LEAVE LAW CONTRACT RIDER

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Contractors of the City of New York [or of other governmental entities] may be required to provide sick time pursuant to the PSLL. The Paid Sick Leave Law Rider, will be included in any contract awarded from this RFP and will incorporate the PSLL as a material term of such a contract. Please read Appendix A of the contract carefully.

SECTION IV. FORMAT AND CONTENT OF THE PROPOSAL**A. PROPOSAL SUBDIVISION INSTRUCTIONS:**

Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8½" X 11" paper. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic paper recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <https://www.epa.gov/smm/comprehensive-procurement-guidelines-paper-and-paper-products>). Pages should be paginated. The proposal will be evaluated on the basis of its content, not its length. Failure to comply with any of these instructions will not make the proposal non-responsive.

1. Technical Proposal (1 original and 6 copies, and 1 electronic version saved as a PDF on a clearly marked compact disk (CD) or a clearly marked USB Flash Drive with the name of the firm): The Technical Proposal should contain all the information requested in Subsection B below, plus completed Standard Form 330 for Proposer and its subconsultants. These forms are available at the following website: <http://www1.nyc.gov/site/ddc/contracts/work-with-ddc.page>. **Such form shall not be altered in any way. Standard forms 254 and 255 will NOT be accepted for this solicitation.**
2. Fee Proposal (1 original): The Fee Proposal shall consist of the information set forth in Attachment 6 to the RFP.

B. TECHNICAL PROPOSAL:

1. Cover Letter: Submit a Cover Letter of no more than three pages, indicating the company name and address, and the name, address and telephone number of the person authorized to represent the firm. **(Be sure to refer to the proper DDC project number and title.)** Include a brief history of the firm, the overall organization of the firm, and a statement of its goals and objectives.

Include a statement indicating whether the proposer is proposing as a single entity, or as a joint venture. If a joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the proposer (i.e. members of the joint venture may meet the qualification requirement collectively). If the proposer is a joint venture, including a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal must include a letter signed by an authorized representative of each member indicating a willingness to accept joint and several liability.

2. Past Experience and Performance of Firm & Subconsultants (if any):
Proposer: Provide examples of up to five (5) projects, for which the proposer has provided direct program and/or project management and oversight services within the last ten (10) years. The submitted projects must demonstrate the proposer's program and/or project management experience in each of the categories listed below. Of the projects submitted:
 - (a) include at least two (2) construction project completed using the design-build delivery method;
 - (b) include at least one (1) construction project involving a correctional facility;
 - (c) include at least one (1) large multi-phase construction project performed in a high-density urban/ metropolitan environment;
 - (d) include at least one (1) large construction project. The definition for the purposes of this RFP shall mean a project with a construction cost of at least One Hundred Million

(\$100,000,000.00) Dollars. This large construction project should demonstrate experience in at least one of the following areas:

- (i) Vertical construction;
- (ii) Mid or high-rise occupied building expansions;
- (iii) Complex building type construction, such as hospital, laboratory, airport, or a major institutional building.

Additionally, in consideration of the sensitive nature of this Projects' locations in New York City, the proposer should include specific examples of any highly visible projects which required the proposer to employ a community liaison subconsultant.

For each project, the proposer shall provide the following: (a) visual materials (i.e., photographs, drawings, brochures), (b) information indicating whether the project was completed on time and within budget, (c) project owner's contact information, including name, title, phone number, and email; and (d) recommendation letter from the owner of the project on the owner's letterhead and/or final performance evaluation for the project on the owner's letterhead or official form. **Proposer is not required to submit a copy of the final performance evaluation for a City project, provided that the final performance evaluation for the project is available through PASSPort.**

Subconsultants:

The proposer must submit Attachment 3, identifying by name the subconsultants it intends to provide throughout the term of the Contract, as well as the type of services to be provided by each subconsultant.

The proposer also submit prior relevant projects completed by the subconsultant, clearly stating the role of the subconsultant on the submitted project as well as their proposed role on management of the project stated in this RFP. Highlight any design build or correctional construction project experience of the subconsultants.

3. Strategic Approach: Provide a statement, of no more than three (3) pages, describing its Strategic Approach, including (1) its understanding of the objectives and complexities of the Design-Build Program and Projects, (2) its methodology for tracking and maintaining the Design-Build Program and Projects' budgets and schedules; (3) its techniques for problem solving; (4) its techniques for conflict resolution between and among Design-Build Program and Project participants (City, Design-Builders, PMC, and other consultants); (5) its explanation how to Design-Build Program and Project teams will be integrated; and (6) its understanding of the key phases of this Design-Build Program.
4. Staffing Plan in Support of the Strategic Approach: Submit a Staffing Plan in support of its Strategic Approach specified in paragraph 3 above. The Staffing Plan shall include personnel for the development and implementation of the Program, as well as personnel for the performance of project management and/or technical services for the Projects. The Staffing Plan shall not include any personnel who perform overhead and/or home office functions. A form for the submission of the Staffing Plan is included as Attachment 4 to this RFP. As described in Attachment 4, the proposer shall identify the following:
 - Contract Executive: Identify the Contract Executive. The Contract Executive shall serve as the PMC's principal representative with respect to its obligations under this contract. The Contract Executive will be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to the Design-Build Program.
 - Program Manager: Identify the Program Manager. The Program Manager will be dedicated exclusively to the Program with a minimum four (4) year commitment to the Program and will be responsible for day-to-day management of the Program. The Program Manager will be responsible for the successful planning, execution, oversight, control and completion of the Program and Projects. This includes the overall responsibility for payments, quality, progress, budget, public interaction, agency interactions, permits, claims, strategy, process improvement, performance and operations. The Program Manager will ensure that the Program is effectively resourced and is responsible for allocating and utilizing resources in an efficient manner and maintaining a cooperative, motivated and successful Program team. The Program Manager must be an employee of the proposer.
 - Other Key Personnel: Identify Key Personnel. This means the team of specific Personnel determined by the proposer to be necessary for successful execution of and completion of the Strategic Approach

for the Design-Build Program. Key Personnel shall provide services for the entire duration of the Design-Build Program. Minimum requirements for individuals assigned to the Program as Key Personnel are set forth in Attachment 4, as well as in Exhibit E of the attached Contract.

- Non-Key PMC Personnel: Identify by title non-Key PMC personnel for the Project. This means PMC Personnel who will provide services that are supportive or ancillary to the services provided by the Key Personnel.
 - Minimum Time Commitment: For all Key Personnel, specify the percent of time each individual will dedicate to the Design-Build Program and/or Projects.
 - Relevant Experience: For each Key Personnel, highlight that individual's years of relevant experience (see Section IV.B.2 for qualifying experience) in providing oversight and management services.
 - Resumes: For all personnel included in the Staffing Plan, submit resumes detailing managerial and technical qualifications, as well as experience with relevant projects. Each resume must not exceed two (2) pages.
5. Summary Projects Matrix: Provide a summary matrix sheet of all projects listed in item IV.B.2 above following the format set forth in Attachment 5. Indicate meaningful involvement on each project by proposer's Key Personal and subconsultants.
6. Organizational Capacity:
- Submit a copy of the proposer's organization chart.
 - Demonstrate the organizational capability of the proposer and its subconsultants by completing Standard Form 330, as indicated below. **Please note that Standard Form 330 must be completed by the proposer and its subconsultants even if the proposer or its subconsultants will not be directly providing any design services.**

The proposer and its subconsultants shall provide the following information in Part I, Section H, and Part II of the Standard Form 330.

Part I, Section H

- a) The projects on which the proposer is currently working.
- b) Up to ten (10) projects the proposer has completed in any scope that demonstrates the proposer's organizational capacity.
- c) Future projects to which the proposer is committed.

Part II

- a) The number of full-time individuals currently employed by the proposer.

All project information must include the dollar value of the contract, and the year the project was completed, or will be completed. Please note that both prime and subconsultants must submit a separate SF330.

7. Proposed Schedule: For evaluation purposes only, submit a proposed Program Implementation and Procurement Schedule for the four (4) Design-Build Projects, including time line for required deliverables. The Proposed Schedule shall not include any hours other than regular business hours (i.e., no evening, weekend or holiday hours).
8. Sample Performance Specification: Submit a sample performance specification that the proposer (or its key subconsultant expected to perform such services for the Design-Build Program) prepared for a design build project, preferably for HVAC, electrical or plumbing system. The sample should be no more than ten (10) pages in length.
9. Statement of Understanding and Certification: The Statement of Understanding and Certification (Attachment 1 of this RFP) should be signed by a responsible partner or corporate officer of the proposing firm and submitted with firm's Portfolio and Technical Proposal.

10. Acknowledgement of Addenda: The Acknowledgement of Addenda form (Attachment 6) serves as the proposer’s acknowledgement of the receipt of addenda to this RFP that may have been issued by the Agency prior to the proposal due date and time. The proposer should complete this form as instructed on the form.

11. Standard Form 330
The Proposer and each of its subconsultant(s) must complete and submit a separate Standard Form 330, even if the proposer or its subconsultant(s) will not be directly providing design services. The proposer and subconsultants must complete all sections of the form including up to five (5) projects in Part I, Section F. The form can be downloaded at <http://www1.nyc.gov/site/ddc/contracts/work-with-ddc.page>

Respondents are instructed to limit the information included in their proposals to the information necessary to demonstrate its technical and financial qualifications for the Project in accordance with Section V, below, and any other information specifically requested in this RFP. DDC is not interested in receiving marketing brochures or generic narratives or other generic/marketing materials. Such materials will not be considered when evaluating the proposals.

C. TECHNICAL PROPOSAL PRESENTATION:

The Agency may schedule a presentation with top ranked proposers. The purposes of the presentation are as follows:

- (a) to allow the Selection Committee and Proposer’s Key Personnel to meet;
- (b) to discuss aspects of the Technical Proposal which are the Past Experience and Performance of the Firm & Subconsultants, Experience of Key Personnel and Staffing Plan, Strategic Approach and Proposed Schedule, and Organizational Capacity;
- (c) to allow the proposer to present its Technical Methodology and use sufficient visual aids to convey the team’s approach;

D. FEE PROPOSAL

Form for the submission of the Fee Proposal are included as Attachment 6 of the RFP. The proposer must submit the Fee Proposal in a separate clearly labeled envelope. The Fee Proposal shall consist of the following: (1) Multiplier for Overhead and Profit; (2) Actual Direct Salary Information; (3) Total Estimated Amount for Staffing Expenses; (4) Total Estimated Amount for Reimbursable Services.

E. PROPOSAL PACKAGE CONTENTS (“CHECKLIST”):

The Proposal Package shall consist of the following FOUR packages. Each package shall be clearly marked with the Project Name, Project Identification Number, and the Name of the Proposer.

CONTENTS TO BE INCLUDED IN EACH SEALED PACKAGE BY PROPOSERS

		Yes	No
PKG 1 - Technical Proposal (RFP §IV(B))			
(A)	1 Original; 6 Copies, and 1 electronic version saved as a PDF on a CD or USB Flash Drive included in package;	_____	_____
(B)	Cover Letter;	_____	_____
(C)	Past Experience and Performance of Firm & Subconsultants;	_____	_____

- (D) Subconsultant Information (RFP Att. 3); _____
- (E) Strategic Approach; _____
- (F) Staffing Plan in Support of Strategic Approach and Identification of Key Personnel (RFP Att. 4); _____
- (G) Summary Matrix of Projects (RFP Att. 5); _____
- (H) Organizational Capacity (Part I, Section H, and Part II of Standard Form 330 for Proposer and Subconsultants); _____
- (I) Organizational Capacity (Organization Chart) _____
- (J) Proposed Schedule; _____
- (K) Sample Performance Specification; _____
- (L) Statement of Understanding and; Certification (RFP Att. 1); _____
- (M) Certification of Compliance with Iran Divestment Act (Att. 2) _____
- (N) Acknowledgement of Addenda (RFP Att. 7) _____

- (O) Standard Form 330 for Proposer and Subconsultants. _____

Yes No

PKG 2 - Doing Business Data Form (RFP Att. 9)

- (A) Doing Business Data Form (Att. 9). _____

Yes No

PKG 3 - Fee Proposal (RFP Att. 6)

- (A) Fee Proposal Form (Att. 6). _____

Yes No

PKG 4 - Schedule B: M/WBE (RFP Att.8)

- (A) Schedule B: M/WBE Participation Requirements Form (Att. 8). _____

SECTION V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. SELECTION PROCESS:

This is a Qualifications/Quality Based Selection (QBS) project. DDC will rank proposals by technical merit. A DDC Evaluation Committee will review, evaluate and score all technical proposals in accordance with the criteria described below. This evaluation and scoring will determine each proposer's technical score.

DDC Evaluation Committee reserves the right to request a one-hour presentation from the top ranked proposers, to interview all presenters, and to visit the proposers' offices for the purpose of clarifying the technical proposals. The proposers selected for the presentations will be determined either through a natural break in scores or technically viable cut off score. DDC will schedule the time and date for presentation and notify the proposers accordingly. The Technical Score will be re-evaluated after the presentation.

The ranking will be submitted to DDC's Executive Consultant Selection Committee (ECSC) who will certify the results and authorize fee negotiations with the highest ranked firm. Should negotiations fail with highest ranked firm, the ECSC will authorize fee negotiations with the next highest ranked firm.

Note: Each proposer is required to submit a Fee Proposal for the project; however, DDC will only open the Fee Proposals of the firm selected for negotiation in accordance with the process described above.

B. TECHNICAL PROPOSAL EVALUATION CRITERIA:

The Proposal evaluation criteria are as follows:

- a) Past Experience and Performance of the Firm & Subconsultants: (Weight 40%)
- b) Experience of Key Personnel and Staffing Plan: (Weight 30%)
- c) Strategic Approach and Proposed Schedule: (Weight 20%)
- d) Organizational Capacity: (Weight 10%)

C. BASIS OF AWARD:

The Department of Design and Construction will award a contract to the responsible proposer whose proposal is determined to be the highest quality and most advantageous to the City, taking into consideration the overall quality of the proposal as measured against factors or criteria as set forth in the RFP and successful negotiation of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude no more than thirty days thereafter.

D. SUPPLY AND SERVICE EMPLOYMENT REPORT:

Upon selection, the successful proposer will be required to submit one original copy of the Department of Small Business Services Supply and Service Employment Report, a copy of which can be downloaded from <http://www1.nyc.gov/site/sbs/businesses/contract-compliance.page> Upon written notification, the proposer must submit the Supply and Service Employment Report within ten days of such notification.

E. PASSPORT:

Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers for Program and Project Management Services for Design-Build Program for the New York City Borough-Based Jail System, Citywide must create online accounts in the new Procurement and Sourcing Solutions

Portal (PASSPort) and file all disclosure information. **Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings.**

For more information about PASSPort, please visit nyc.gov/passport

SECTION VI. GENERAL INFORMATION TO PROPOSERS

A. COMPLAINTS

The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

B. APPLICABLE LAWS

This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.

C. GENERAL CONTRACT PROVISIONS

Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A-General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is attached to the form of Contract attached to this RFP.

D. CONTRACT AWARD

Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite Procurement and Sourcing Solutions Portal (PASSPort) online disclosure process and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)

All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. In anticipation of awards, proposers must create online accounts in the new Procurement and Sourcing Solutions Portal (PASSPort) and file all disclosure information. Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings. For more information about PASSPort, please visit nyc.gov/passport.

E. PROPOSER APPEAL RIGHTS

Pursuant to the PPB Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

F. MULTI-YEAR CONTRACTS

Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal

year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

G. PROMPT PAYMENT POLICY

Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.

H. PRICES IRREVOCABLE

Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

I. CONFIDENTIAL, PROPRIETARY INFORMATION OR TRADE SECRETS

Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.

J. RFP POSTPONEMENT/CANCELLATION

The Agency reserves the right to postpone or cancel this RFP in whole or in part, and to reject all proposals.

K. PROPOSER COSTS

Proposers will not be reimbursed for any costs incurred to prepare proposals.

L. VENDEX/PASSPORT FEES

Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the VENDEX/PASSPort system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1 million) (above \$1 million).

M. M. CHARTER SECTION 312(A) CERTIFICATION.

The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not result in the displacement of any New York City employee within this Agency. See attached Displacement Determination Form.

_____ The Agency has determined that the contract(s) to be awarded through this Request for Proposals will result in the displacement of New York City employee(s) within this Agency. See attached Displacement Determination Form.

_____ The contract to be awarded through this Request for Proposal is a task order contract that does not simultaneously result in the award of a first task order; a displacement determination will be made in conjunction with the issuance of each task pursuant to such task order contract. Determination for any subsequent task orders will be made in conjunction with such subsequent task orders.

ACCO Signature

Date

ATTACHMENT 1: STATEMENT OF UNDERSTANDING AND CERTIFICATION

STATEMENT OF UNDERSTANDING: By signing in the space provided below, the undersigned certifies that the proposer: (i) has read and understands the scope and requirements of this project, as described in the RFP and all attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the form of contract, attached hereto, (iv) will, if its proposal is accepted, enter into the attached standard contract with the New York City Department of Design and Construction, and (v) will carry all types of insurance specified in the contract. The undersigned further certifies that the information in this proposal is, to the best of his/her knowledge, true and accurate.

Is the proposal printed on both sides, on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in the instructions to this solicitation?

- Yes** **No**

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

Section V: Vendor Certification and Required Affirmations

I hereby:

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

 Name of Proposer
 (Full Business Name)

By: _____	_____
Signature of Partner or Corporate Officer	Date
_____	_____
Print Name	Title
_____	_____
Telephone #	EIN #
_____	_____
Address	E-Mail Address

ATTACHMENT 2**IRAN DIVESTMENT ACT COMPLIANCE RIDER
FOR NEW YORK CITY CONTRACTORS**

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

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

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

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

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

ATTACHMENT 2 (continued)
PROPOSER'S CERTIFICATION OF COMPLIANCE WITH IRAN DIVESTMENT ACT

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

[Please Check One]

PROPOSER'S CERTIFICATION

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

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

Dated: _____, _____
City, State

_____, 20_____
Month, Date Year

SIGNATURE

PRINTED NAME

TITLE

FULL BUSINESS NAME

Sworn to before me this

_____ day of _____, 20_____

Notary Public

ATTACHMENT 3

IDENTIFICATION OF SUBCONSULTANTS

The proposer shall submit Attachment 3 as part of its Technical Proposal. In the space provided below, the proposer shall identify by name the Subconsultants it will provide throughout the term of the Contract, as well as the type of services to be provided by each subconsultant. If the Proposer intends to perform any of the services listed below with its own employees, it shall so indicate by inserting the words "In House".

<u>TYPE OF SERVICES</u>	<u>SUBCONSULTANT</u>	<u>W/MBE</u>
Structural Engineering Design Services:	_____	_____
Architectural Design Services:	_____	_____
Electrical/ Lighting Design Services:	_____	_____
Geotechnical Engineering Services:	_____	_____
Civil Engineering Services:	_____	_____
Landscape Architectural Design Services	_____	_____
Environmental Engineering/Hazmat Services:	_____	_____
Mechanical Design Services:	_____	_____
Correctional Facility Design Services:	_____	_____
Security/Electronics Design Services:	_____	_____
Fire Protection Design Services:	_____	_____

ATTACHMENT 4

TECHNICAL PROPOSAL – FORM FOR STAFFING PLAN AND IDENTIFICATION OF KEY PERSONNEL

FMS ID: RIKERSPMC
Project: Program and Project Management Services for the Design-Build Program for New York City Borough-Based Jail System

Submission: The proposer shall submit Attachment 4 as part of its Technical Proposal.

Staffing Plan: The proposer shall submit a Staffing Plan in support of its Strategic Approach. The Staffing Plan shall only include personnel for the execution of and completion of the Strategic Approach for the Design-Build Program and Projects. The Staffing Plan in support of the Strategic Approach must not include any information about the proposer’s fees, including but not limited to salaries or hourly rates for any proposed personnel.

Resumes: For all personnel included in the Staffing Plan, the proposer shall submit resumes detailing managerial and technical qualifications, as well as experience with similar projects

Contract Executive: The proposer shall identify the Contract Executive. The Contract Executive shall serve as the Contractor’s principal representative with respect to its obligations under this contract. The Contract Executive shall be responsible for providing, on an as needed basis, executive or management expertise and oversight with respect to the Project.

Contract Executive: _____

Title	Years of Relevant Experience	Education	NYS License/ Certificate	Specific Experience
Contract Executive	20	N/A	N/A	Principal or Officer of PMC; 20 years of construction experience, including 8 years of executive or management experience on design-build projects

Program Manager: The proposer shall identify the Program Manager. The Program Manager will be dedicated exclusively to the Program with a minimum four (4) year commitment to the Program and will be responsible for day-to-day management of the Program. The Program Manager will be responsible for the successful planning, execution, oversight, control and completion of the Program and Projects. This includes the overall responsibility for payments, quality, progress, budget, public interaction, agency interactions, permits, claims, strategy, process improvement, performance and operations. The Program Manager will ensure that the Program is effectively resourced and is responsible for allocating and utilizing resources in an efficient manner and maintaining a cooperative, motivated and successful Program team. The Program Manager must be an employee of the proposer.

Program Manager: _____

Title	Years of Relevant Experience	Education	NYS License/ Certificate	Specific Experience
Program Manager	15	Bachelor’s or advanced degree in real estate, finance, construction management, architecture, engineering, law or related field	N/A	15 years of construction experience, including at least 8 years of design-build experience

ATTACHMENT 4 (continued)

Other Key Personnel: The proposer shall identify Key Personnel for the Program who possess the minimum requirements set forth below. This means the team of specific Personnel determined by the proposer to be necessary for successful execution of and completion of the Strategic Approach for the Program and Projects. Key Personnel shall provide services for the entire duration of the Program.

Minimum Requirements for Key Personnel are set forth below.

Title	Years of Relevant Experience	Education	NYS License/Certificate	Specific Experience
Deputy Program Manager	10	Bachelor's or master's degree in construction management, architecture, engineering or related field	N/A	At least 5 years of design-build experience
Design Program Manager	10	Bachelor's degree in architecture or engineering	RA or PE in NYS	At least 5 years of design-build experience
Program Controls Manager	10	Bachelor's degree in computer science or engineering or related field	N/A	At least 7 years of design-build experience
Program Safety Manager	10	Bachelor's degree in occupational health or similar field and/or associate degree in safety, health or related field	30-hour OSHA Construction Safety Course; or OSHA Safety and Health Standards for the Construction Industry training program (OSHA 510), or Certified Safety Professional (CSP), or Certified Industrial Hygienist (CIH).	At least 3 years of construction safety experience in NYC
Communication Specialist	8	Bachelor's degree	N/A	At least 5 years of professional experience in New York City

Key Personnel: The proposer may add additional lines and/or titles if necessary.

Title:

Name:

Deputy Program Manager:

ATTACHMENT 4 (continued)

Design Program
Manager: _____

Program Controls
Manager: _____

Program Safety
Manager: _____

Communication
Specialist: _____

Non-Key PMC Personnel: The proposer shall identify by title other non-Key PMC personnel who will provide services that are supportive or ancillary to the services provided by the Key Personnel.

Title:

ATTACHMENT 4 (continued)

Certification: By signing in the space provided below, the proposer certifies that if the proposer is selected for the Project, it will assign such individuals to the Program and/or Projects as Key Personnel.

The proposer understands that if it is selected, the City was induced to make such selection based upon the proposer's certification that it will assign to the Program and/or Projects the individuals proposed as Key Personnel. The proposer further understands that failure to provide such individuals as Key Personnel shall be considered a material breach of the Contract and grounds for termination for cause.

If the proposer is unable to make the certification set forth above, it shall attach a signed statement indicating why it is unable to make the certification.

Name of Proposer

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Firm

EIN #

ATTACHMENT 5

SUMMARY PROJECTS MATRIX

The proposer shall submit Attachment 5 as part of its Technical Proposal, in substantially the form provided below. The proposer must provide a summary matrix of all projects listed in RFP Part IV.B.2, and must indicate meaningful involvement on each project by proposer’s Key Personnel and Subconsultants.

Project Name	Subconsultants										Key Personnel								
	Structural engineering Design Services	Architectural Design Services	Electrical/Lighting Design Services	Geotechnical Engineering Services	Civil Engineering Services	Landscape Architectural Design Services	Environmental Engineering/HAZMAT services	Mechanical Design Services	Correctional Design Services	Security/Electronics Design Services	Fire Protection Design Services	*Other Key Subconsultants	Program Manager	Deputy Program Manager	Design Program Manager	Program Controls Manager	Program Safety Manager	Communication Specialist	*Other Key Personnel
Project 1																			
Project 2																			
Project 3																			
Project 4																			
Project 5																			

* Other – list any additional proposer’s key Subconsultant or Key Personnel with meaningful involvement in any of the listed projects and who may be critical to success of this Program.

ATTACHMENT 6:

FEE PROPOSAL

FMS ID: RIKERSPMC

Project: Program and Project Management Services for the Design-Build Program for New York City Borough Based Jail System

Negotiation: DDC will attempt to negotiate the items listed below on a fair and reasonable basis with the highest ranked proposer. If negotiations are not successful, DDC will enter into negotiations with the next highest ranked firm.

(A) Multiplier for Overhead and Profit: In the space provided below, the proposer shall indicate a Proposed Multiplier for Overhead and Profit. Such Multiplier is subject to negotiation.

Proposed Multiplier for Overhead and Profit: _____

- (1) In support of its proposed Multiplier, the proposer must submit its most recent audited Statement of Direct Labor, Fringe Benefits and General Overhead prepared in accordance with Part 31 of the Federal Acquisition Regulation.
- (2) Furthermore, if the proposer has an audited overhead rate that has been accepted by a cognizant governmental agency that engages in capital construction work (city, state, or federal), it must submit such audited overhead rate, as well as a letter approving and/or accepting the firm's overhead rate. The proposer is advised that DDC has **NO OBLIGATION** to accept a submitted overhead rate, even if such overhead rate has been approved by a governmental agency.
- (3) DDC reserves the right to require the proposer to submit any records, documentation or accounting data in connection with its proposed Multiplier.

(B) Actual Direct Salary Information: For each individual identified as Key Personnel in Attachment 3, the proposer shall submit the Actual Annual Direct Salary Information described below.

- (1) Actual Annual Direct Salary: An individual's actual annual direct salary shall be the salary amount directly payable to such employee on an annual basis and shall **NOT INCLUDE** any amount for the following costs or payments: (1) any payments for services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (2) any employer payments mandated by law, including without limitation, social security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) any costs for any other fringe and/or supplemental benefits.
- (2) Actual Annual Direct Salary on an Hourly Basis: To compute an individual's actual annual direct salary on an hourly basis, the individual's actual annual direct salary, as defined above, shall be divided by 2080.
- (3) Payroll Register: To verify the actual direct salary information described above, the proposer must submit the firm's payroll register for the six (6) months prior to submission of the proposal.

(C) Total Estimated Staffing Expenses: In the space provided below, the proposer shall calculate the total estimated staffing expenses for the Program. Such calculation shall be based on the Actual Direct Salary

ATTACHMENT 6 (continued)

Rate per hour per title and the total estimated hours per title. **The proposer is directed to include additional titles that it considers necessary and essential to the performance of the services under this RFP.**

Personnel: Titles	Estimated Number <u>of Staff</u>	Direct Salary Rate <u>Per Hour</u>	x	Total Estimated <u>Hours Per Title</u>	=	Total Estimated Amount <u>Per Title</u>
Program Manager:	1	\$ _____	x	_____	=	
Deputy Program Manager:	4	\$ _____	x	_____	=	
Design Program Manager:	1	\$ _____	x	_____	=	
Program Controls Manager:	1	\$ _____	x	_____	=	
Program Safety Manager:	1	\$ _____	x	_____	=	
Communication Specialist:	1	\$ _____	x	_____	=	
_____	-	\$ _____	x	_____	=	
_____	-	\$ _____	x	_____	=	
_____	-	\$ _____	x	_____	=	

(Addition of Total Estimated Amount per Title for all titles listed above) _____

Total with Multiplier for Overhead and Profit: _____

(D) Total Estimated Reimbursable Services: In the space provided below, the proposer shall itemize all other direct costs/out-of-pocket expenses included in the Proposal.

Detailed Description	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

Total Other Direct Costs /Out-of-Pocket Expenses \$ _____

ATTACHMENT 6 (continued)

The proposer must sign the Fee Proposal in the space provided below.

Name of Proposer (Full Business Name)

By: _____
Signature of Partner or Corporate Officer

Date

Print Name

Title

Firm

EIN #

ATTACHMENT 7

ACKNOWLEDGEMENT OF ADDENDA

TITLE OF THE REQUEST FOR PROPOSALS: RIKERSPMC Program and Project Management Services for Design-Build Program for the New York City Borough-Based Jail System, Citywide	PIN: 8502019CR0001P
---	--------------------------------------

Instructions: The proposer is to complete Part I or Part II of this form, whichever is applicable, and sign and date this form. This form serves as the proposer's acknowledgement of the receipt of Addenda to this Request for Proposals (RFP) which may have been issued by the Agency prior to the Proposal Due Date and Time

 Part I
Listed below are the dates of issue for each Addendum received in connection with this RFP.

Addendum # 1, dated _____
Addendum # 2, dated _____
Addendum # 3, dated _____
Addendum # 4, dated _____
Addendum # 5, dated _____
Addendum # 6, dated _____
Addendum # 7, dated _____
Addendum # 8, dated _____
Addendum # 9, dated _____
Addendum #10, dated _____

All addenda must be signed and also included in the Technical Proposal.

 Part II

No Addendum was received in connection with this RFP.

Proposer Name

Proposer's Authorized Representative:

Name: _____
Title: _____
Signature: _____
Date: _____

ATTACHMENT 8**SCHEDULE B: M/WBE UTILIZATION PLAN**

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

Schedule B: M/WBE Utilization Plan: Schedule B: M/WBE Utilization Plan for this Contract is set forth in this RFP on the pages following the section entitled "Notice to All Prospective Contractors". The Schedule B: M/WBE Utilization Plan (Part I) indicates whether Participation Goals have been established for this Contract. If Participation Goals have been established for this Contract, the proposer must submit a Schedule B: M/WBE Utilization Plan (Part II) with its proposal.

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

Rejection of the Proposal: The proposer must complete Schedule B: M/WBE Utilization Plan (Part II) set forth in this RFP on the pages following the section entitled "Notice to All Prospective Contractors". A Schedule B submitted by the proposer which does not include the Vendor Certification and Required Affirmations (See Section V of Part II) will be deemed to be non-responsive, unless a full waiver of the Participation Goals is granted (Schedule B, Part III). In the event that the City determines that the proposer has submitted a Schedule B where the Vendor Certification and Required Affirmations are completed but other aspects of the Schedule B are not complete, or contain a copy or computation error that is at odds with the Vendor Certification and Required Affirmations, the proposer will be notified by the Agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return and completed Schedule B to the Agency. Failure to do so will result in a determination that the Proposal is non-responsive. Receipt of notification is defined as the date notice is emailed or faxed (if the proposer has provided an email address or fax number), or no later than five (5) calendar days from the date of mailing or upon delivery, if delivered.

06/2013

NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

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

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

The Contractor must comply with all applicable MBE and WBE requirements for this Contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at

zhangji@ddc.nyc.gov or via facsimile at (718) 391-1886). Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

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

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

11. Modification of **M/WBE Utilization Plan**. (a) A Contractor may request a modification of its **M/WBE Utilization Plan** after award of this Contract. **PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission.** The Agency may grant a request for Modification of a Contractor's **M/WBE Utilization Plan** if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(i) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;

(ii) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;

(iii) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;

(iv) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the **M/WBE Utilization Plan**, and for which the Contractor claims an inability to retain MBEs or WBEs;

(v) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(vi) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;

(vii) Timely written requests for assistance made by the Contractor to Agency's **M/WBE liaison officer** and to DSBS;

(viii) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

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

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

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

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

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

PART B: MISCELLANEOUS

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

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

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

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

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

ARTICLE II. ENFORCEMENT

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

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

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

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

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

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

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

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

Tax ID #: _____

APT E- 85019P0004
 PIN #: _____

SCHEDULE B – M/WBE Utilization Plan

Part I: M/WBE Participation Goals

Part I to be completed by contracting agency

Contract Overview

APT E- Pin #	85019P0004	FMS Project	ID#: RIKERSPMC
Project Title/ Agency PIN #	Program and Project Management Services for Design Build Program for The New York City Borough-Based Jail System, Citywide. 8502019CR0001P		
Bid/Proposal Response Date	4:00 P.M., Thursday, November 1 st , 2018		
Contracting Agency	Department of Design and Construction		
Agency Address	30-30 Thompson Avenue	City	Long Island City
		State	NY
		Zip Code	11101
Contact Person	Noelia Guzman	Title	MWBE Outreach and Compliance Analyst
Telephone #	718-391-2198	Email	guzmanno@ddc.nyc.gov

Project Description *(attach additional pages if necessary)*

PROJECT ID: RIKERSPMC
 Program and Project Management Services for Design Build Program for The New York City Borough-Based Jail System, Citywide.

M/WBE Participation Goals for Services
Enter the percentage amount for each group or for an unspecified goal. Please note that there are no goals for Asian Americans in Professional Services.

Prime Contract Industry: _____

Group	Percentage
Unspecified	34%
or	
Black American	%
Hispanic American	%
Asian American	NO GOAL %
Women	%
Total Participation Goals	34%

Line 1

Tax ID #: _____

APT E- 85019P0004
PIN #: _____

SCHEDULE B - Part II: M/WBE Participation Plan

Part II to be completed by the bidder/proposer.

Please note: For Non-M/WBE Prime Contractors who will NOT subcontract any services and will self-perform the entire contract, you must obtain a FULL waiver by completing the Waiver Application on pages 5 and 6 and timely submitting it to the contracting agency pursuant to the Notice to Prospective Contractors. Once a FULL WAIVER is granted, it must be included with your bid or proposal and you do not have to complete or submit this form with your bid or proposal.

Section I: Prime Contractor Contact Information	
Tax ID # _____	FMS Vendor ID # _____
Business Name _____	Contact Person _____
Address _____	
Telephone # _____	Email _____

Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.

PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS					
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal Value		Agency Total Participation Goals (Line 1, Page 1)		Calculated M/WBE Participation Amount
	\$	X		=	\$ Line 2

PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS					
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal Value		Adjusted Participation Goal (From Partial Waiver)		Calculated M/WBE Participation Amount
	\$	X		=	\$ Line 3

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

As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals. Please check all that apply to Prime Contractor:

MBE WBE

As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the amount located on Lines 2 or 3 above, as applicable. The value of any work subcontracted to non M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.

As a non M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the amount located on Lines 2 or 3 above, as applicable.

Section IV: General Contract Information

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

Enter brief description of the type(s) and dollar value of subcontracts for all/any services you plan on subcontracting if awarded this contract. For each item, indicate whether the work is designated for participation by MBEs and/or WBEs and the time frame in which such work is scheduled to begin and end. Use additional sheets if necessary.

✓ Scopes of Subcontract Work

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____
11. _____
12. _____
13. _____
14. _____
15. _____
16. _____
17. _____

Section V: Vendor Certification and Required Affirmations

I hereby:

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

Signature _____

Date _____

Print Name _____

Title _____

SCHEDULE B – PART III – REQUEST FOR WAIVER OF M/WBE PARTICIPATION REQUIREMENT

Contract Overview

Tax ID # _____ FMS Vendor ID # _____

Business Name _____

Contact Name _____ Telephone # _____ Email _____

Type of Procurement Competitive Sealed Bids Other Bid/Response Due Date _____

APT E-PIN # (for this Contracting Agency: _____
procurement): _____

M/WBE Participation Goals as described in bid/solicitation documents

_____ %
Agency M/WBE Participation Goal

Proposed M/WBE Participation Goal as anticipated by vendor seeking waiver

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for services and/or credited to an M/WBE Prime Contractor or Qualified Joint Venture.

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

- Vendor does not subcontract services, and has the capacity and good faith intention to perform all such work itself with its own employees.
- Vendor subcontracts *some* of this type of work but at a *lower* % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract. (Attach subcontracting plan outlining services that the vendor will self-perform and subcontract to other vendors or consultants.)
- Vendor has other legitimate business reasons for proposing the M/WBE Participation Goal above. Explain under separate cover.

References

List 3 most recent contracts performed for NYC agencies (if any). Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

CONTRACT NO.	AGENCY	DATE COMPLETED
_____	_____	_____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

CONTRACT NO.	AGENCY	DATE COMPLETED
_____	_____	_____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

CONTRACT NO.	AGENCY	DATE COMPLETED
_____	_____	_____
Total Contract Amount \$ _____	Total Amount Subcontracted \$ _____	
Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____	Item of Work Subcontracted and Value of subcontract _____

Tax ID #: _____

APT E- 85019P0004
PIN #: _____

List 3 most recent contracts performed for other entities. Include information for each subcontract awarded in performance of such contracts. Add more pages if necessary.

(Complete ONLY if vendor has performed fewer than 3 New York City contracts.)

TYPE OF Contract	_____	ENTITY	_____	DATE COMPLETED	_____
Manager at entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Type of Work Subcontracted	_____		_____	_____	

TYPE OF Contract	_____	AGENCY/ENTITY	_____	DATE COMPLETED	_____
Manager at agency/entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____

TYPE OF Contract	_____	AGENCY/ENTITY	_____	DATE COMPLETED	_____
Manager at entity that hired vendor (Name/Phone No./Email)					
Total Contract Amount	\$ _____	Total Amount Subcontracted	\$ _____		
Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____	Item of Work Subcontracted and Value of subcontract	_____

VENDOR CERTIFICATION: *I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.*

Signature: _____
Print Name: _____

Date: _____
Title: _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____

Date: _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature: _____

Date: _____

Waiver Determination

Full Waiver Approved:
Waiver Denied:
Partial Waiver Approved:
Revised Participation Goal: _____%

ATTACHMENT 9

DOING BUSINESS DATA FORM



Questions and Answers About the Doing Business Data Form

What is the purpose of the Doing Business Data Form (DBDF)?

To collect accurate, up-to-date identification information about organizations that have business dealings with the City of New York in order to comply with Local Law 34 of 2007 (LL 34), a campaign finance reform law. LL 34 limits municipal campaign contributions from principal officers, owners and senior managers of entities doing business with the City and mandates the creation of a Doing Business Database to allow the City to enforce the law. The information requested in this DBDF must be provided, regardless of whether the organization or the people associated with it make or intend to make campaign contributions. No sensitive personal information collected will be disclosed to the public.

Why have I received this DBDF?

The contract, franchise, concession, grant or economic development agreement you are proposing on, applying for or have already been awarded is considered a business dealing with the City under LL 34. No proposal or application will be considered and no award will be made unless this DBDF is completed. Most transactions valued at more than \$5,000 are considered business dealings and require completion of the Doing Business Data Form. Exceptions include transactions awarded on an emergency basis or by "conventional" competitive sealed bid (i.e. bids that do not use a prequalified list or "Best Value" selection criteria.) Other types of transactions that are considered business dealings include real property and land use actions with the City.

What individuals will be included in the Doing Business Database?

The principal officers, owners and certain senior managers of organizations listed in the Doing Business Database are themselves considered to be doing business with the City and will be included in the Database.

- **Principal Officers** are the Chief Executive Officer (CEO), Chief Financial Officer (CFO) and Chief Operating Officer, or their functional equivalents. See the DBDF for examples of titles that apply.
- **Principal Owners** are individuals who own or control 10% or more of the organization. This includes stockholders, partners and anyone else with an ownership or controlling interest in the entity.
- **Senior Managers** include anyone who, either by job title or actual duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any contract, concession, franchise, grant or economic development agreement with the City. At least one Senior Manager must be listed or the Data Form will be considered incomplete.

NEW FOR 2018: As of January 2018, the DBDF must report organizations, as well as individuals, that own 10% or more of the entity. A DBDF with such a certification, filed as a full (never filed before) or as a change form, must be submitted before an entity can then file a DBDF that indicates no changes since the previous form. Contact DBA at 212-788-8104 or at doingbusiness@mocs.nyc.gov to inquire if DBA has received such a form.

I have already completed a Doing Business Data Form, do I have to submit another one?

Yes. An organization is required to submit a DBDF each time it enters into a transaction considered a business dealing with the City, including contract, concession and franchise proposals. However, the DBDF has both a Change option, which requires only information that has changed since the last DBDF was filed, and a No Change option. No organization should have to fill out the entire DBDF more than once.

If you have already submitted a DBDF for one transaction type (such as a contract), and this is the first time you are completing a DBDF for a different transaction type (such as a grant), please select the Change option and complete Section 4 (Senior Managers) for the new transaction type.

Will the personal information on the DBDF be available to the public?

No. The names and titles of the officers, owners and senior managers reported on the DBDF will be made available to the public, as will information about the organization itself. However, personal identifying information, such as home address and date of birth, will not be disclosed to the public, and home address will not be used for communication purposes.

I provided some of this information in PASSPort; do I have to provide it again?

Yes. Although a Doing Business Data Form and PASSPort request some of the same information, they serve entirely different purposes. In addition, the DBDF requests information concerning senior managers, which is not in PASSPort.

What organizations will be included in the Doing Business Database?

Organizations that hold \$100,000 or more in grants, contracts for goods or services, franchises or concessions (\$500,000 for construction contracts), or that hold any economic development agreement or pension fund investment contract, are considered to be doing business with the City for the purposes of LL 34. Because all of the business that an organization does or proposes to do with the City will be added together, the DBDF must be completed for all transactions valued at more than \$5,000 even if the organization doesn't currently do enough business with the City to be listed in the Database.

No one in my organization plans to contribute to a candidate; do I have to fill out this DBDF?

Yes. All organizations are required to return this DBDF with complete and accurate information, regardless of the history or intention of the entity or its officers, owners or senior managers to make campaign contributions. The Doing Business Data Form must be complete so that the Campaign Finance Board can verify whether future contributions are in compliance with the law.

My organization is proposing on a contract with another firm as a Joint Venture that does not exist yet; how should the Data Form be completed?

A joint venture that does not yet exist must submit a DBDF for each of its component firms. If the joint venture receives the award, it must then complete a form in the name of the joint venture.

How long will an organization and its officers, owners and senior managers remain listed on the Doing Business Database?

- **Contract, Concession and Economic Development Agreement holders:** generally for the term of the transaction, plus one year.
- **Franchise and Grant holders:** from the commencement or renewal of the transaction, plus one year.
- **Pension investment contracts:** from the time of presentation on an investment opportunity or the submission of a proposal, whichever is earlier, until the end of the contract, plus one year.
- **Line item and discretionary appropriations:** from the date of budget adoption until the end of the contract, plus one year.
- **Contract proposers:** for one year from the proposal date or date of public advertisement of the solicitation, whichever is later.
- **Franchise and Concession proposers:** for one year from the proposal submission date.

For information on other transaction types, contact the Doing Business Accountability Project.

How does a person remove him/herself from the Doing Business Database?

When an organization stops doing business with the City, the people associated with it are removed from the Database automatically. However, any person who believes that s/he should not be listed may apply for removal. Reasons that a person would be removed include his/her no longer being the principal officer, owner or senior manager of the organization. Organizations may also update their database information by submitting an update form. Removal Request and Update forms are available online <https://www1.nyc.gov/site/mocs/resources/forms.page> or by calling 212-788-8104.

What are the campaign contribution limits for people doing business with the City?

Contributions to City Council candidates are limited to \$250 per election cycle; \$320 to Borough President candidates; and \$400 to candidates for citywide office. Please contact the NYC Campaign Finance Board for more information at www.nycffb.info, or 212-306-7100.

The DBDF is to be returned to the City office that issued it.

If you have any questions about the Doing Business Data Form please contact the Doing Business Accountability Project at 212-788-8104 or doingbusiness@mocs.nyc.gov.



Doing Business Data Form

To be completed by the City agency prior to distribution

Agency Dept. of Design & Construction Transaction ID 8502019CR0001P/85019P0004

Check One

Proposal Award

Transaction Type (check one)

Concession Economic Development Agreement Franchise Grant Pension Investment Contract Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

Please return the completed Data Form to the City office that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@mocs.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

If you are completing this form by hand, please print clearly.

Entity Information

Entity EIN/TIN _____ Entity Name _____

Filing Status

NEW: Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

(Select One)

- Entity has never completed a Doing Business Data Form. Fill out the entire form.
- Change from previous Data Form dated _____. Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.
- No Change from previous Data Form dated _____. Skip to the bottom of the last page.

Entity is a Non-Profit Yes No

Entity Type Corporation (any type) Joint Venture LLC Partnership (any type) Sole Proprietor Other (specify) _____

Address _____

City _____ State _____ Zip _____

Phone _____ E-mail _____

Provide your e-mail address in order to receive notices regarding this form by e-mail.

Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Solo Proprietor or Chairperson of the Board.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CEO _____ on date _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CFO _____ on date _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former COO _____ on date _____

Principal Owners

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, own or control 10% or more of the entity. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the Senior Managers section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) _____

Individual Owners (who own or control 10% or more of the entity)

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Organization Owners (that own or control 10% or more of the entity)

Organization Name _____

Organization Name _____

Organization Name _____

Remove the following previously-reported Principal Owners

Name _____ Removal Date _____

Name _____ Removal Date _____

Name _____ Removal Date _____

Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. At least one senior manager must be listed, or the Data Form will be considered incomplete. If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Remove the following previously-reported Senior Managers

Name _____ removal date _____

Name _____ removal date _____

Certification

I certify that the information submitted on these two pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name _____ Title _____

Entity Name _____ Work Phone # _____

Signature _____ Date _____

Please return this form to the City agency that supplied it to you, not to the Doing Business Accountability Project.

Standard Form

ATTACHMENT 10**WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER**

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

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

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

ATTACHMENT 10 (continued)**NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS**

This contract includes a provision concerning the protection of employees for whistleblowing activity, pursuant to New York City Local Law Nos. 30-2012 and 33-2012, effective October 18, 2012 and September 18, 2012, respectively. The provisions apply to contracts with a value in excess of \$100,000.

Local Law No. 33-2012, the Whistleblower Protection Expansion Act ("WPEA"), prohibits a contractor or its subcontractor from taking an adverse personnel action against an employee or officer for whistleblower activity in connection with a City contract; requires that certain City contracts include a provision to that effect; and provides that a contractor or subcontractor may be subject to penalties and injunctive relief if a court finds that it retaliated in violation of the WPEA. The WPEA is codified at Section 12-113 of the New York City Administrative Code.

Local Law No. 30-2012 requires a contractor to prominently post information explaining how its employees can report allegations of fraud, false claims, criminality, or corruption in connection with a City contract to City officials and the rights and remedies afforded to employees for whistleblowing activity. Local Law No. 30-2012 is codified at Section 6-132 of the New York City Administrative Code.

ATTACHMENT 11:
SUBCONTRACTOR REPORTING

NOTICE TO BIDDERS

As of March 2013 the City has implemented a new web based subcontractor reporting system through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. In order to use the new system, a PIP account will be required. Detailed instructions on creating a PIP account and using the new system are also available at that site. Additional assistance with PIP may be received by emailing the Financial Information Services Agency Help Desk at pip@fisa.nyc.gov.

In order to obtain subcontractor approval under section 3.02 of Appendix A or Article 17 of the Standard Construction Contract and PPB Rule § 4-13 Contractor is required to list the subcontractor in the system. For each subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of subcontractor work, start and end date of the subcontract and identification of the subcontractor's industry. Thereafter, Contractor will be required to report in the system the payments made to each subcontractor within 30 days of making the payment. If any of the required information changes throughout the term of the contract, Contractor will be required to revise the information in the system.

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages.

Contractor hereby agrees to these provisions.

ATTACHMENT 12

Displacement Determination Form – Pursuant to City Charter § 312(a)

(for PSRs or equivalent pre-procurement documents)

This form must be used to certify whether or not there is displacement in the instant contracting action, as defined in City Charter § 312(a) (as amended by Local Law 63 of 2011). You can either certify that there is no displacement by completing Part 1 of this form, or you can certify that there is displacement by completing Part 2 of this form.

If the contract that you are awarding is a task order contract that does not simultaneously result in the award of a first task order, then you must check the box on the bottom of this page; displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. If the contract that you are awarding does simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

If you have any questions about Local Law 63 or about completing this form, please contact the Mayor's Office of Contract Services at APTL63@cityhall.nyc.gov or (212) 788-0010.

Procurement Description:

APT EPIN: 85019P0004

Agency: DDC

Your Name: Melanie Sanchez

Phone: 718-391-3430

Email: SanchezM@ddc.nyc.gov

Please specifically identify the service(s) being procured.

FY19NDDC2308, Program and Project Management Services for Design Build Program for The New York City Borough-Based Jail System, Citywide.

— If the contract to be awarded as a result of this procurement action is a task order contract (multiple or single award and multiple or single agency) that does not simultaneously result in the award of a first task order, then displacement determinations will be made in conjunction with the issuance of task orders pursuant to the subject contract. (Check this box *only* if you are completing this form for a task order contract that will not simultaneously result in the award of the first task order. If you check this box, do not fill out the remainder of this form.)

If the contract to be awarded as a result of this procurement action *does* simultaneously result in the award of a first task order, then the displacement determination for that first task order must be done prior to issuance of the solicitation and you must complete either Part 1 or Part 2 of this form.

Part 1: Certification of No Displacement

X **The Agency has determined that the contract resulting from this procurement action will not result in the displacement of any City employee within this Agency, as defined by Charter § 312(a).**

The basis upon which the Agency has made this determination (Please answer *all* questions under Part 1):

Do any civil service and/or job titles within this Agency currently perform the services sought by the proposed contract and/or services of a substantially similar nature or purpose?

Yes X No ___

If so, list the names of such titles and the extent to which Agency employees within such titles currently perform such services.

Construction Project Manager, Associate Project Manager, Highways and Sewers Inspector, Surveyor, Assistant Civil Engineer, Administrative Architect, Administrative Architect Non-Manager (NM), Administrative Construction Project Manager, Administrative Engineer, Administrative Engineer Non-Manager (NM), Administrative Landmarks Preservationist, Administrative Landscape Architect, Administrative Landscape Architect Non-Manager (NM), Administrative Project Manager, Administrative Project Manager Non-Manager (NM), Architect, Administrative Construction Project Manager Non-Manager (NM), Assistant Mechanical Engineer, Assistant Landscape Architect, Mechanical Engineer, Civil Engineer, Project Manager

Do the services sought by the proposed contract expand, supplement, or replace existing services?

Yes X No ___

In either event, include a detailed description comparing the services sought by the proposed contract with such existing services.

The services under the proposed contracts expand existing capacity and secure program and project management services. The role of DDC staff in the Division of Public Building is predominantly to supervise and manage the performance of the contractor and act as liaisons between the client agencies and the contractors.

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

Yes ___ No X

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

Constraints imposed by the agency budget for personnel services, in addition to fluctuations in our capital design and construction portfolio, has prevented the agency from hiring qualified personnel to meet these needs inhouse.

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

There are 107 Construction Project Managers, 106 Associate Project Managers, 2 Highways and Sewers Inspectors, 37 Surveyors, 128 Assistant Civil Engineers, 15 Administrative Architects, 26 Administrative Architect Non-Managers (NM), 2 Administrative Construction Project Managers, 38 Administrative Engineers, 20 Administrative Engineer Non-Managers (NM), 1 Administrative Landmarks Preservationist, 3 Administrative Landscape Architect, 1 Administrative Landscape Architect Non-Manager (NM), 36 Administrative Project Managers, 88 Administrative Project Manager Non-Managers (NM), 18 Architects, 13 Administrative Construction Project Manager Non-Managers (NM), 3 Assistant Mechanical Engineers, 4 Assistant Landscape Architects, 9 Mechanical Engineers, 55 Civil Engineers, 22 Project Managers. Total of 734 employees.

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

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

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

The Agency does not have the staff to perform the scope of work outlined on this contract. As such, the procurement of this contract does not result in the displacement of the agency's employees. The agency's employees assigned will supervise and manage the performance of the contractor and act as a liaison between the client agencies and the contractor.

Part 2: Certification of Displacement

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

1 CATIONS. ANY PUBLIC-FACING WEBSITE, WEB APPLICATION, OR DIGITAL APPLI-
2 CATION, INCLUDING, BUT NOT LIMITED TO, A SOCIAL NETWORK, AD NETWORK, OR
3 SEARCH ENGINE, MAY BE DESIGNATED AN "ONLINE PLATFORM" PURSUANT TO THE
4 STATE BOARD'S REGULATIONS. SUCH REGULATIONS SHALL BE PROMULGATED NO
5 LATER THAN ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS
6 SECTION.

7 S 12. Subdivision 3 of section 14-126 of the election law, as added by
8 section 6 of subpart C of part H of chapter 55 of the laws of 2014, is
9 amended and a new subdivision 7 is added to read as follows:

10 3. Any person who falsely identifies or knowingly fails to identify
11 any independent expenditure as required by subdivision two of section
12 14-107 of this article shall be subject to a civil penalty up to one
13 thousand dollars or up to the cost of the communication, whichever is
14 greater, in a special proceeding or civil action brought by the state
15 board of elections chief enforcement counsel [or imposed directly by the
16 state board of elections] PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FIVE
17 OF SECTION 3-104 OF THIS CHAPTER. For purposes of this subdivision, the
18 term "person" shall mean a person, group of persons, corporation, unin-
19 corporated business entity, labor organization or business, trade or
20 professional association or organization or political committee.

21 7. ANY ONLINE PLATFORM THAT FAILS TO COMPLY WITH THE REQUIREMENTS OF
22 SECTION 14-107-B OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY UP
23 TO ONE THOUSAND DOLLARS FOR EACH VIOLATION IN A SPECIAL PROCEEDING OR
24 CIVIL ACTION BROUGHT BY THE STATE BOARD OF ELECTIONS CHIEF ENFORCEMENT
25 COUNSEL PURSUANT TO PARAGRAPH (A) OF SUBDIVISION FIVE OF SECTION 3-104
26 OF THIS CHAPTER.

27 S 13. This act shall take effect immediately and shall apply to all
28 communications made on or after the thirtieth day following the date on
29 which the rules promulgated by the state board of elections pursuant to
30 subdivision 2 of section 14-107-b of this article, as added by section
31 eleven of this act, shall have become effective; provided that, the
32 state board of elections shall notify the legislative bill drafting
33 commission when such rules are promulgated and effective in order that
34 the commission may maintain an accurate and timely effective data base
35 of the official text of the laws of the state of New York in furtherance
36 of effectuating the provisions of section 44 of the legislative law and
37 section 70-b of the public officers law.

38 PART KKK

39 Section 1. This act shall be known and may be cited as the "New York
40 City Rikers Island Jail Complex Replacement act".

41 S 2. For the purposes of this act:

42 (a) "Authorized entity" shall mean the New York City department of
43 design and construction.

44 (b) "Best value" shall mean the basis for awarding contracts for
45 services to a proposer that optimizes quality, cost and efficiency,
46 price and performance criteria, which may include, but is not limited
47 to:

- 48 (1) The quality of the proposer's performance on previous projects;
- 49 (2) The timeliness of the proposer's performance on previous projects;
- 50 (3) The level of customer satisfaction with the proposer's performance
51 on previous projects;
- 52 (4) The proposer's record of performing previous projects on budget
53 and ability to minimize cost overruns;
- 54 (5) The proposer's ability to limit change orders;

- 1 (6) The proposer's ability to prepare appropriate project plans;
2 (7) The proposer's technical capacities;
3 (8) The individual qualifications of the proposer's key personnel;
4 (9) The proposer's ability to assess and manage risk and minimize risk
5 impact;
6 (10) The proposer's financial capability;
7 (11) The proposer's ability to comply with applicable requirements,
8 including the provisions of articles 145, 147 and 148 of the education
9 law;
10 (12) The proposer's past record of compliance with federal, state and
11 local laws, rules, licensing requirements, where applicable, and execu-
12 tive orders, including but not limited to compliance with the labor law
13 and other applicable labor and prevailing wage laws, article 15-A of the
14 executive law, and any other applicable laws concerning minority-and
15 women-owned business enterprise participation;
16 (13) The proposer's record of complying with existing labor standards,
17 maintaining harmonious labor relations, and protecting the health and
18 safety of workers and payment of wages above any locally-defined living
19 wage; and
20 (14) A quantitative factor to be used in evaluation of bids or offers
21 for awarding of contracts for bidders or offerers that are certified as
22 minority- or women-owned business enterprises pursuant to article 15-A
23 of the executive law, and certified pursuant to local law as minority-
24 or women-owned business enterprises. Where an agency identifies a quan-
25 titative factor pursuant to this paragraph, the agency must specify that
26 business certified as minority- or women-owned business enterprises
27 pursuant to article 15-A of the executive law as well as those certified
28 as minority- or women-owned business enterprises or pursuant to section
29 thirteen hundred four of the New York City charter are eligible to qual-
30 ify for such factor. Nothing in this paragraph shall be construed as a
31 requirement that such businesses be concurrently certified as minority-
32 or women-owned business enterprises under both article 15-A of the exec-
33 utive law and section 1304 of the New York City charter to qualify for
34 such quantitative factor.
- 35 (c) "Cost plus" shall mean compensating a contractor for the cost to
36 complete a contract by reimbursing actual costs for labor, equipment and
37 materials plus an additional amount for overhead and profit.
- 38 (d) "Design-build contract" shall mean a contract for the design and
39 construction of a public work with a single entity, which may be a team
40 comprised of separate entities.
- 41 (e) "Project labor agreement" shall have the meaning set forth in
42 subdivision 1 of section 222 of the labor law. A project labor agreement
43 shall require participation in apprentice training programs in accord-
44 ance with paragraph (e) of subdivision 2 of such section.
- 45 (f) "Public work" shall mean a public work in the city of New York
46 related to the following, and shall refer to this public work:
47 for the construction or reconstruction of any new or existing correc-
48 tional facilities by the New York City department of design or
49 construction where such construction or reconstruction is determined
50 necessary for the timely closure of the Rikers Island Jail Complex and
51 where such construction or reconstruction has been approved by majority
52 vote of the New York state commission of correction.
- 53 S 3. Any contract for a public work undertaken pursuant to a project
54 labor agreement in accordance with section 222 of the labor law may be a
55 design-build contract in accordance with this act.

1 S 4. Notwithstanding any general, special or local law, rule or regu-
2 lation to the contrary, including but not limited to article 5-A of the
3 general municipal law, and in conformity with the requirements of this
4 act, for any public work that has an estimated total cost of not less
5 than ten million dollars and is undertaken pursuant to a project labor
6 agreement in accordance with section 222 of the labor law, an authorized
7 entity charged with awarding a contract for public work may use the
8 alternative delivery method referred to as design-build contracts.

9 (a) A contractor selected by such authorized entity to enter into a
10 design-build contract shall be selected through a two-step method, as
11 follows:

12 (1) Step one. Generation of a list of responding entities that have
13 demonstrated the general capability to perform the design-build
14 contract. Such list shall consist of a specified number of responding
15 entities, as determined by an authorized entity, and shall be generated
16 based upon the authorized entity's review of responses to a publicly
17 advertised request for qualifications. The authorized entity's request
18 for qualifications shall include a general description of the public
19 work, the maximum number of responding entities to be included on the
20 list, the selection criteria to be used and the relative weight of each
21 criteria in generating the list. Such selection criteria shall include
22 the qualifications and experience of the design and construction team,
23 organization, demonstrated responsibility, ability of the team or of a
24 member or members of the team to comply with applicable requirements,
25 including the provisions of articles 145, 147, and 148 of the education
26 law, past record of compliance with the labor law, and such other quali-
27 fications the authorized entity deems appropriate, which may include but
28 are not limited to project understanding, financial capability and
29 record of past performance. The authorized entity shall evaluate and
30 rate all responding entities to the request for qualifications. Based
31 upon such ratings, the authorized entity shall list the responding enti-
32 ties that shall receive a request for proposals in accordance with para-
33 graph two of this subdivision. To the extent consistent with applicable
34 federal law, the authorized entity shall consider, when awarding any
35 contract pursuant to this section, the participation of (i) responding
36 entities that are certified as minority- or women-owned business enter-
37 prises pursuant to article 15-A of the executive law, or certified
38 pursuant to local law as minority- or women-owned business enterprises;
39 and (ii) small business concerns identified pursuant to subdivision (b)
40 of section 139-g of the state finance law.

41 (2) Step two. Selection of the proposal which is the best value to the
42 authorized entity. The authorized entity shall issue a request for
43 proposals to the responding entities listed pursuant to paragraph one of
44 this subdivision. If such a responding entity consists of a team of
45 separate entities, the entities that compromise such a team must remain
46 unchanged from the responding entity as listed pursuant to paragraph one
47 of this subdivision unless otherwise approved by the authorized entity.
48 The request for proposals shall set forth the public work's scope of
49 work, and other requirements, as determined by the authorized entity,
50 which may include separate goals for work under the contract to be
51 performed by businesses certified as minority- or women-owned business
52 enterprises pursuant to article 15-A of the executive law, or certified
53 pursuant to local law as minority- or women-owned business enterprises.
54 The request for proposals shall also specify the criteria to be used to
55 evaluate the responses and the relative weight of each of such criteria.
56 Such criteria shall include the proposal's cost, the quality of the

1 proposal's solution, the qualifications and experience of the proposer,
2 and other factors deemed pertinent by the authorized entity, which may
3 include, but shall not be limited to, the proposal's manner and schedule
4 of project implementation, the proposer's ability to complete the work
5 in a timely and satisfactory manner, maintenance costs of the completed
6 public work, maintenance of traffic approach, and community impact. Any
7 contract awarded pursuant to this act shall be awarded to a responsive
8 and responsible proposer, which, in consideration of these and other
9 specified criteria deemed pertinent, offers the best value, as deter-
10 mined by the authorized entity. The request for proposals shall include
11 a statement that proposers shall designate in writing those portions of
12 the proposal that contain trade secrets or other proprietary information
13 that are to remain confidential; that the material designated as confi-
14 dential shall be readily separable from the proposal. Nothing in this
15 subdivision shall be construed to prohibit the authorized entity from
16 negotiating final contract terms and conditions including cost. All
17 proposals submitted shall be scored according to the criteria listed in
18 the request for proposals and such final scores shall be published on
19 the authorized entity's website.

20 (b) An authorized entity awarding a design-build contract to a
21 contractor offering the best value may but shall not be required to use
22 the following types of contracts:

23 (1) A cost-plus not to exceed guaranteed maximum price form of
24 contract in which the authorized entity shall be entitled to monitor and
25 audit all costs. In establishing the schedule and process for determin-
26 ing a guaranteed maximum price, the contract between the authorized
27 entity and the contractor shall:

28 (i) Describe the scope of the work and the cost of performing such
29 work,

30 (ii) Include a detailed line item cost breakdown,

31 (iii) Include a list of all drawings, specifications and other infor-
32 mation on which the guaranteed maximum price is based,

33 (iv) Include the dates of substantial and final completion on which
34 the guaranteed maximum price is based, and

35 (v) Include a schedule of unit prices; or

36 (2) A lump sum contract in which the contractor agrees to accept a set
37 dollar amount for a contract which comprises a single bid without
38 providing a cost breakdown for all costs such as for equipment, labor,
39 materials, as well as such contractor's profit for completing all items
40 of work comprising the public work.

41 S 5. Any contract entered into pursuant to this act shall include a
42 clause requiring that any professional services regulated by articles
43 145, 147 and 148 of the education law shall be performed and stamped and
44 sealed, where appropriate, by a professional licensed in accordance with
45 the appropriate articles.

46 S 6. Construction or reconstruction with respect to each contract
47 entered into by an authorized entity pursuant to this act shall be
48 deemed a "public work" to be performed in accordance with the provisions
49 of article 8 of the labor law, as well as subject to sections 200, 240,
50 241 and 242 of such law and enforcement of prevailing wage requirements
51 pursuant to applicable law or, for projects or public works receiving
52 federal aid, applicable federal requirements for prevailing wage. Any
53 contract entered into pursuant to this act shall include a clause
54 requiring the selected design builder to obligate every tier of contrac-
55 tor working on the public work to comply with the project labor agree-
56 ment referenced in section three of this act, and shall include project

1 labor agreement compliance monitoring and enforcement provisions
2 consistent with the applicable project labor agreement.

3 S 7. Each contract entered into by an authorized entity pursuant to
4 this act shall comply with the objectives and goals with regard to
5 minority- and women-owned business enterprises pursuant to, as applica-
6 ble, section 6-129 of the administrative code of the city of New York,
7 or, for projects or public works receiving federal aid, applicable
8 federal requirements for disadvantaged business enterprises or minority-
9 and women-owned business enterprises.

10 S 8. Public works undertaken by an authorized entity pursuant to this
11 act shall be subject to the requirements of article 8 of the environ-
12 mental conservation law, and, where applicable, the requirements of the
13 national environmental policy act.

14 S 9. (a) Notwithstanding any provision of law to the contrary, all
15 rights or benefits, including terms and conditions of employment, and
16 protection of civil service and collective bargaining status of all
17 employees of authorized entities solely in connection with the public
18 works identified in subdivision (f) of section two of this act, shall be
19 preserved and protected.

20 (b) Nothing in this act shall result in the: (1) displacement of any
21 currently employed worker or loss of position (including partial
22 displacement such as a reduction in the hours of non-overtime work,
23 wages or employment benefits), or result in the impairment of existing
24 collective bargaining agreements; and (2) transfer of existing duties
25 and functions related to maintenance and operations currently performed
26 by existing employees of authorized entities to a contractor.

27 (c) Employees of authorized entities using design-build contracts
28 serving in positions in newly created titles shall be assigned to the
29 appropriate bargaining unit. Nothing contained in this act shall be
30 construed to affect (1) the existing rights of employees of such enti-
31 ties pursuant to an existing collective bargaining agreement, (2) the
32 existing representational relationships among employee organizations
33 representing employees of such entities, or (3) the bargaining relation-
34 ships between such entities and such employee organizations.

35 S 10. The submission of a proposal or responses or the execution of a
36 design-build contract pursuant to this act shall not be construed to be
37 a violation of section 6512 of the education law.

38 S 11. Nothing contained in this act shall limit the right or obli-
39 gation of any authorized entity to comply with the provisions of any
40 existing contract or to award contracts as otherwise provided by law.

41 S 12. Any construction or reconstruction performed pursuant to this
42 act shall be subject to any applicable uniform land use review proce-
43 dures and local zoning requirements.

44 S 13. Before the demolition of any correctional facility located on
45 the Rikers Island Jail Complex, a substitute correctional facility must
46 be identified and if such facility is defined as a public works project
47 pursuant to this act, such public works project must be fully
48 constructed before such demolition may occur.

49 S 14. This act shall take effect immediately and shall expire and be
50 deemed repealed two years after such date, provided that, public works
51 with requests for qualifications issued prior to such repeal shall be
52 permitted to continue under this act notwithstanding such repeal.

1 Section 1. This act shall be known and may be cited as the "New York
2 city housing authority modernization investment act".

3 S 2. For the purposes of this act:

4 (a) "Authorized entity" shall mean the New York city department of
5 design and construction, and the New York city housing authority.

6 (b) "Best value" shall mean the basis for awarding contracts for
7 services to a proposer that optimizes quality, cost and efficiency,
8 price and performance criteria, which may include, but is not limited
9 to:

10 (1) The quality of the proposer's performance on previous projects;

11 (2) The timeliness of the proposer's performance on previous projects;

12 (3) The level of customer satisfaction with the proposer's performance
13 on previous projects;

14 (4) The proposer's record of performing previous projects on budget
15 and ability to minimize cost overruns;

16 (5) The proposer's ability to limit change orders;

17 (6) The proposer's ability to prepare appropriate project plans;

18 (7) The proposer's technical capacities;

19 (8) The individual qualifications of the proposer's key personnel;

20 (9) The proposer's ability to assess and manage risk and minimize risk
21 impact;

22 (10) The proposer's financial capability;

23 (11) The proposer's ability to comply with applicable requirements,
24 including the provisions of articles 145, 147 and 148 of the education
25 law;

26 (12) The proposer's past record of compliance with federal, state and
27 local laws, rules, licensing requirements, where applicable, and execu-
28 tive orders, including but not limited to compliance with the labor law
29 and other applicable labor and prevailing wage laws, article 15-A of the
30 executive law, and any other applicable laws concerning minority- and
31 women-owned business enterprise participation;

32 (13) The proposer's record of complying with existing labor standards,
33 maintaining harmonious labor relations, and protecting the health and
34 safety of workers and payment of wages above any locally-defined living
35 wage; and

36 (14) A quantitative factor to be used in evaluation of bids or offers
37 for awarding of contracts for bidders or offerers that are certified as
38 minority- or women-owned business enterprises pursuant to article 15-A
39 of the executive law, and certified pursuant to local law as minority-
40 or women-owned business enterprises. Where an agency identifies a quan-
41 titative factor pursuant to this paragraph, the agency must specify that
42 businesses certified as minority- or women-owned business enterprises
43 pursuant to article 15-A of the executive law as well as those certified
44 as minority- or women-owned business enterprises or pursuant to section
45 1304 of the New York City charter are eligible to qualify for such
46 factor. Nothing in this paragraph shall be construed as a requirement
47 that such businesses be concurrently certified as minority- or women-
48 owned business enterprises under both article 15-A of the executive law
49 and section 1304 of the New York City charter to qualify for such quan-
50 titative factors. Such basis shall reflect, wherever possible, objec-
51 tive and quantifiable analysis.

52 (c) "Cost plus" shall mean compensating a contractor for the cost to
53 complete a contract by reimbursing actual costs for labor, equipment and
54 materials plus an additional amount for overhead and profit.

1 (d) "Design-build contract" shall mean a contract for the design and
2 construction of a public work with a single entity, which may be a team
3 comprised of separate entities.

4 (e) "Project labor agreement" shall have the meaning set forth in
5 subdivision 1 of section 222 of the labor law. A project labor agreement
6 shall require participation in apprentice training programs in accord-
7 ance with paragraph (e) of subdivision 2 of such section.

8 (f) "Public work" shall mean a public work in the city of New York
9 related to the following, and shall refer to this public work; the
10 construction or reconstruction of residential properties owned by the
11 New York City housing authority where such construction or recon-
12 struction is required to remediate certain conditions of habitability,
13 including but not limited to, roof repair, lead or mold abatement and
14 remediation, plumbing installation or repair, boiler installation or
15 repair, or any structural repair where such construction or recon-
16 struction is deemed necessary in accordance with the terms of a state
17 declaration of a disaster emergency pursuant to section 402-d of the
18 public housing law.

19 S 3. Any contract for a public work undertaken pursuant to a project
20 labor agreement in accordance with section 222 of the labor law may be a
21 design-build contract in accordance with this act.

22 S 4. Notwithstanding any general, special or local law, rule or regu-
23 lation to the contrary, including but not limited to article 5-A of the
24 general municipal law, section 151 of the public housing law, and in
25 conformity with the requirements of this act, for any public work that
26 is undertaken pursuant to a project labor agreement in accordance with
27 section 222 of the labor law, an authorized entity charged with awarding
28 a contract for public work may use the alternative delivery method
29 referred to as design-build contracts.

30 (a) A contractor selected by such authorized entity to enter into a
31 design-build contract shall be selected through a two-step method, as
32 follows:

33 (1) Step one. Generation of a list of responding entities that have
34 demonstrated the general capability to perform the design-build
35 contract. Such list shall consist of a specified number of responding
36 entities, as determined by an authorized entity, and shall be generated
37 based upon the authorized entity's review of responses to a publicly
38 advertised request for qualifications. The authorized entity's request
39 for qualifications shall include a general description of the public
40 work, the maximum number of responding entities to be included on the
41 list, the selection criteria to be used and the relative weight of each
42 criteria in generating the list. Such selection criteria shall include
43 the qualifications and experience of the design and construction team,
44 organization, demonstrated responsibility, ability of the team or of a
45 member or members of the team to comply with applicable requirements,
46 including the provisions of articles 145, 147, and 148 of the education
47 law, past record of compliance with the labor law, and such other quali-
48 fications the authorized entity deems appropriate, which may include but
49 are not limited to project understanding, financial capability and
50 record of past performance. The authorized entity shall evaluate and
51 rate all responding entities to the request for qualifications. Based
52 upon such ratings, the authorized entity shall list the responding enti-
53 ties that shall receive a request for proposals in accordance with para-
54 graph two of this subdivision. To the extent consistent with applicable
55 federal law, the authorized entity shall consider, when awarding any
56 contract pursuant to this section, the participation of: (i) responding

1 entities that are certified as minority- or women-owned business enter-
2 prises pursuant to article 15-A of the executive law, or certified
3 pursuant to local law as minority- or women-owned business enterprises;
4 and (ii) small business concerns identified pursuant to subdivision (b)
5 of section 139-g of the state finance law.

6 (2) Step two. Selection of the proposal which is the best value to the
7 authorized entity. The authorized entity shall issue a request for
8 proposals to the responding entities listed pursuant to paragraph one of
9 this subdivision. If such a responding entity consists of a team of
10 separate entities, the entities that comprise such a team must remain
11 unchanged from the responding entity as listed pursuant to paragraph one
12 of this subdivision unless otherwise approved by the authorized entity.
13 The request for proposals shall set forth the public work's scope of
14 work, and other requirements, as determined by the authorized entity,
15 which may include separate goals for work under the contract to be
16 performed by businesses certified as minority- or women-owned business
17 enterprises pursuant to article 15-A of the executive law, or certified
18 pursuant to local law as minority- or women-owned business enterprises.
19 The request for proposals shall also specify the criteria to be used to
20 evaluate the responses and the relative weight of each of such criteria.
21 Such criteria shall include the proposal's cost, the quality of the
22 proposal's solution, the qualifications and experience of the proposer,
23 and other factors deemed pertinent by the authorized entity, which may
24 include, but shall not be limited to, the proposal's manner and schedule
25 of project implementation, the proposer's ability to complete the work
26 in a timely and satisfactory manner, maintenance costs of the completed
27 public work, maintenance of traffic approach, and community impact. Any
28 contract awarded pursuant to this act shall be awarded to a responsive
29 and responsible proposer, which, in consideration of these and other
30 specified criteria deemed pertinent, offers the best value, as deter-
31 mined by the authorized entity. The request for proposals shall include
32 a statement that proposers shall designate in writing those portions of
33 the proposal that contain trade secrets or other proprietary information
34 that are to remain confidential; that the material designated as confi-
35 dential shall be readily separable from the proposal. Nothing in this
36 subdivision shall be construed to prohibit the authorized entity from
37 negotiating final contract terms and conditions including cost. All
38 proposals submitted shall be scored according to the criteria listed in
39 the request for proposals and such final scores shall be published on
40 the authorized entity's website.

41 (b) An authorized entity awarding a design-build contract to a
42 contractor offering the best value may but shall not be required to use
43 the following types of contracts:

44 (1) A cost-plus not to exceed guaranteed maximum price form of
45 contract in which the authorized entity shall be entitled to monitor and
46 audit all costs. In establishing the schedule and process for determin-
47 ing a guaranteed maximum price, the contract between the authorized
48 entity and the contractor shall:

49 (i) Describe the scope of the work and the cost of performing such
50 work,

51 (ii) Include a detailed line item cost breakdown,

52 (iii) Include a list of all drawings, specifications and other infor-
53 mation on which the guaranteed maximum price is based,

54 (iv) Include the dates of substantial and final completion on which
55 the guaranteed maximum price is based, and

56 (v) Include a schedule of unit prices; or

1 (2) A lump sum contract in which the contractor agrees to accept a set
2 dollar amount for a contract which comprises a single bid without
3 providing a cost breakdown for all costs such as for equipment, labor,
4 materials, as well as such contractor's profit for completing all items
5 of work comprising the public work.

6 S 5. Any contract entered into pursuant to this act shall include a
7 clause requiring that any professional services regulated by articles
8 145, 147 and 148 of the education law shall be performed and stamped and
9 sealed, where appropriate, by a professional licensed in accordance with
10 the appropriate articles.

11 S 6. Construction with respect to each contract entered into by an
12 authorized entity pursuant to this act shall be deemed a "public work"
13 to be performed in accordance with the provisions of article 8 of the
14 labor law, as well as subject to sections 200, 240, 241 and 242 of such
15 law and enforcement of prevailing wage requirements pursuant to applica-
16 ble law or, for projects or public works receiving federal aid, applica-
17 ble federal requirements for prevailing wage. Any contract entered into
18 pursuant to this act shall include a clause requiring the selected
19 design builder to obligate every tier of contractor working on the
20 public work to comply with the project labor agreement referenced in
21 section three of this act, and shall include project labor agreement
22 compliance monitoring and enforcement provisions consistent with the
23 applicable project labor agreement.

24 S 7. Each contract entered into by an authorized entity pursuant to
25 this act shall comply with the objectives and goals with regard to
26 minority- and women-owned business enterprises pursuant to, as applica-
27 ble, section 6-129 of the administrative code of the city of New York,
28 or, for projects or public works receiving federal aid, applicable
29 federal requirements for disadvantaged business enterprises or minority-
30 and women-owned business enterprises.

31 S 8. Public works undertaken by an authorized entity pursuant to this
32 act shall be subject to the requirements of article 8 of the environ-
33 mental conservation law, and, where applicable, the requirements of the
34 national environmental policy act.

35 S 9. (a) Notwithstanding any provision of law to the contrary, all
36 rights or benefits, including terms and conditions of employment, and
37 protection of civil service and collective bargaining status of all
38 employees of authorized entities solely in connection with the public
39 works identified in subdivision (f) of section two of this act, shall be
40 preserved and protected.

41 (b) Nothing in this act shall result in the: (1) displacement of any
42 currently employed worker or loss of position (including partial
43 displacement such as a reduction in the hours of non-overtime work,
44 wages or employment benefits), or result in the impairment of existing
45 collective bargaining agreements; and (2) transfer of existing duties
46 and functions related to maintenance and operations currently performed
47 by existing employees of authorized entities to a contractor.

48 (c) Employees of authorized entities using design-build contracts
49 serving in positions in newly created titles shall be assigned to the
50 appropriate bargaining unit. Nothing contained in this act shall be
51 construed to affect: (1) the existing rights of employees of such enti-
52 ties pursuant to an existing collective bargaining agreement, (2) the
53 existing representational relationships among employee organizations
54 representing employees of such entities, or (3) the bargaining relation-
55 ships between such entities and such employee organizations.

1 S 10. The submission of a proposal or responses or the execution of a
2 design-build contract pursuant to this act shall not be construed to be
3 a violation of section 6512 of the education law.

4 S 11. Nothing contained in this act shall limit the right or obli-
5 gation of any authorized entity to comply with the provisions of any
6 existing contract or to award contracts as otherwise provided by law.

7 S 12. This act shall take effect immediately and shall expire and be
8 deemed repealed 2 years after such date, provided that, public works
9 with requests for qualifications issued prior to such repeal shall be
10 permitted to continue under this act notwithstanding such repeal.

11 PART MMM

12 Section 1. This act shall be known and may be cited as the "New York
13 Pennsylvania Station Public Safety Improvements Act".

14 S 2. It is hereby found and declared, that the rail and transportation
15 facility known as New York Pennsylvania Station ("Penn Station") is
16 antiquated, substandard, and inadequate to meet current transportation
17 and public safety needs and presents an unreasonable safety risk to the
18 public; Penn Station serves as a major transportation hub for the Metro-
19 politan Transportation Authority ("MTA"), New York City Transit, Amtrak,
20 the Long Island Railroad, and the New Jersey Transit. It serves hundreds
21 of millions of passengers on an annual basis. Well over 600,000 passen-
22 gers travel through Penn Station on a daily basis. This is more people
23 than travel through LaGuardia, John F. Kennedy International, and Newark
24 Liberty International airports combined. Penn Station is in need of
25 modernization to meet public safety needs. Penn Station is currently
26 overcrowded, hard to navigate, at times often chaotic and has a limited
27 capacity for security and proper policing. Penn Station is in desperate
28 need of more access and egress to allow better entrance and exit capaci-
29 ty and expedited evacuation procedures. In this time of heightened
30 terrorist threats Penn Station needs more controlled points for security
31 monitoring and equipment. Passenger flow and security access must allow
32 manageability in emergency situations. The current situation poses a
33 clear public safety hazard. With the new adjoining Farley Building
34 Moynihan Train Hall soon to be completed, the proposed Gateway Tunnel,
35 and improved Long Island Railroad access the number of commuters enter-
36 ing Penn Station is expected to increase dramatically.

37 S 3. It is further found and declared that such conditions and circum-
38 stances require action to repair or redevelop such facilities into safe,
39 modern, efficient facilities to assure the safety and comfort of travel-
40 ers. Work is currently underway within Penn Station to improve passage-
41 ways, concourses, lighting and amenities. Connections with the new
42 Moynihan Train Hall at Farley are also underway, as well as planning for
43 remaining necessary improvements to access and egress and to the
44 surrounding areas to position such areas to accommodate and attract
45 passengers and evolving technological and business and commercial needs
46 and practices.

47 S 4. This is a pressing public safety and transportation issue and is
48 a major objective for the State to resolve and should be made a top
49 priority. MTA and the New York state urban development corporation
50 ("UDC") should coordinate and consult with community leaders, business
51 groups and federal and city government to design a solution.

52 S 5. The State will provide funds to UDC to begin with the planning of
53 any such redevelopment.

54 S 6. This act shall take effect immediately.

THE CITY OF NEW YORK
DEPARTMENT OF DESIGN AND CONSTRUCTION
DIVISION OF PUBLIC BUILDINGS
30-30 THOMSON AVENUE
LONG ISLAND CITY, NEW YORK 11101

CONTRACT FOR
PROGRAM AND PROJECT MANAGEMENT SERVICES

PROJECT: **Program and Project Management Services
for Design-Build Program for the New York City
Borough Based Jail System**

BOROUGH: **Citywide**

FMS ID: **RIKERSPMC**

**REGISTRATION
NUMBER:**

E-PIN: **85019P0004**

PIN NUMBER: **8502019CR0001P**

PMC: _____

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

WITNESSETH:

WHEREAS, the City desires to have program and project management services performed for the Program and Projects described herein, and

WHEREAS, the PMC has been selected based upon and in consideration of its representation that it can perform the required services set forth herein in a timely and expeditious manner,

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

ARTICLE 1 - Definitions

1.1 "Agreement" means the various documents that constitute the contract between the PMC and the City, including (1) the Request for Proposals for the Contract ("RFP"), (2) the PMC's Proposal for the Contract, and (3) the Exhibits set forth below. In the event of any conflict between the RFP and the PMC's Proposal, the RFP will prevail.

- Exhibit A Schedule A: Contract Information and Schedule A
- Exhibit B Staffing Plan
- Exhibit C Program Objectives
- Exhibit D Scope of Services
- Exhibit E Minimum Title Requirements
- Exhibit F Schedule B: M/WBE Utilization Plan
- Exhibit G Program Office Requirements
- Exhibit H Hiring and Employment Rider: HireNYC and Reporting Requirements
- Exhibit I Appendix A: General Provisions Governing Contracts for Consultants, Professional, Technical, Human and Client Services

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

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

1.4 "Building Information Modeling" or "BIM" means a computerized process that involves the generation and management of digital representations of physical and functional characteristics of a facility. The resulting Building Information Models ("BIMs") serve as shared knowledge resources to support decision-making about a facility throughout the entire design and construction process. BIM provides a process for the virtual construction of a facility prior to its actual physical construction, thereby reducing uncertainty, improving safety, working out problems, and simulating and analyzing potential impacts. BIM embodies and is capable of generating the following documents: Design Documents, Shop Drawings, and Record Drawings (also known as "As Built Drawings").

1.5 "Building Information Model(s)" or "BIM(s)" means the digital model(s) generated through the BIM process.

1.6 "City" means the City of New York.

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

1.8 "Commencement Date" means the date set forth in the Notice to Proceed issued to the PMC by the Commissioner setting forth the date for Commencement of the Work.

1.9 "Commissioner" or "Agency Head" means the head of the Department or their duly authorized representative. The term "duly authorized representative" will include any person or persons acting within the limits of their authority.

1.10 "Commissioner's Representative" means the Assistant Commissioner or other DDC employee designated by the

Commissioner or any successor or alternate representative designated by the Commissioner.

- 1.11 "Comptroller" means the Comptroller of the City of New York, their successors, or duly authorized representatives.
- 1.12 "Construction Documents" means the final Design Documents for the construction work, including final Design Documents for any discrete unit of the Design-Build Work, and all modifications thereto prepared by Design-Builder(s) engaged by the Department and maintained on-site during the construction work.
- 1.13 "Consultant" or "Consultant(s)" means any person, firm, partnership or corporation engaged by the City to furnish architectural, engineering, design, or any other consulting services for the Program or any Project other than the PMC or a Design-Builder.
- 1.14 "Contract" or "Contract Documents" means the Agreement referred to in Paragraph 1.1 of this Article.
- 1.15 "Contractor" or "Program Management Consultant" or "PMC" means the entity entering into this Agreement with the Department.
- 1.16 "Days" means calendar days unless otherwise specifically noted to mean business days.
- 1.17 "Department" or "DDC" means the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or their duly authorized representative.
- 1.18 "Design-Builder" or "DB" means any person, entity, partnership, joint venture or conglomerate engaged by the Department, as authorized by Law, to furnish both construction services and, through duly licensed professionals, architectural, engineering, or any other design services for any Project pursuant to a Design-Build Contract.
- 1.19 "Design-Build Contract" or "Design-Build Contract Documents" means the contract between DDC and any Design-Builder for a Project managed under the Design-Build Program, including but not limited to the executed contract form, general conditions, and special provisions that may be included in the Design-Build Contract Documents.
- 1.20 "Design-Build Manual" or "Manual" means the document described in Exhibit D setting forth all policies, procedures, standard forms and documents for the Design-Build Program.
- 1.21 "Design-Build Program" or "Program" means DDC's Design-Build Program for the New York City Program for a Borough Based Jail System.
- 1.22 "Design-Build Work" or "DB Work" means any and all work performed by a Design-Builder pursuant to a Design-Build Contract.
- 1.23 "Design Documents" means all maps, plans, Project Specifications, reports, calculations, records, submittals, and other specified documents prepared by a Design-Builder in the course of performing Project design work.
- 1.24 "DB Final Acceptance" means the final written acceptance of all required Design-Build Work for a Project, as determined by the Commissioner.
- 1.25 "PMC Final Acceptance" means final written acceptance of all required PMC Work, as determined by the Commissioner.
- 1.26 "Government Entity" means the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.
- 1.27 "Law" or "Laws" means the New York City Charter ("Charter"), the New York City Administrative Code ("Admin. Code"), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
- 1.28 "Mayor" means the Mayor of the City of New York, their successors or duly authorized representatives.
- 1.29 "Modification" means any written amendment of this Agreement signed by both the DDC and the PMC.
- 1.30 "New York City Rikers Island Jail Complex Replacement Act" or the "Act" means the design-build authorizing legislation.
- 1.31 "Notice to Proceed" or "NTP" means the written notice issued by the Commissioner specifying the time for commencement of the Work.
- 1.32 "Procurement Policy Board" or "PPB" means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules which have broad application throughout the City.
- 1.33 "PPB Rules" means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York ("RCNY"), § 1-01 et seq.
- 1.34 "Project(s)" means the Project or Projects described in Exhibit C or later assigned to the Design-Build Program.

- 1.35 "Project Labor Agreement" or "PLA" means the project labor agreement entered into or designated by the City for the Design-Build Program or any Project.
- 1.36 "Project Schedule" means the approved baseline schedule for any Project, as determined and set forth in a Design-Build Contract.
- 1.37 "Progress Schedule" means the schedule submitted by a Design-Builder showing the progress of the Design-Build Work, as measured against the approved baseline Project Schedule.
- 1.38 "Safety Standards" means all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through DB Final Acceptance of the Design-Build Work for the last Project managed under the Design-Build Program, pertaining to worker safety and accident prevention applicable to the Project and/or the construction work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).
- 1.39 "Shop Drawing" means any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.
- 1.40 "Site(s)" means the area(s) upon or in which construction work for any Project is carried on, and such other areas adjacent thereto as may be designated by the Design-Builder(s) or Commissioner.
- 1.41 "Specifications" means all directions, requirements and standards of performance applied to the Design-Build Work.
- 1.42 "State" means the State of New York.
- 1.43 "Subcontractor" or "Subconsultant" means any person, firm, or corporation, other than employees of the PMC, who or which contracts with the PMC or its subcontractors to furnish, or actually furnishes, services, labor, or labor and materials, or labor and equipment hereunder. All Subcontractors are subject to the prior written approval of the Commissioner.
- 1.44 "Substantial Completion" means the written determination by the Commissioner that all required Design-Build Work for a Project is substantially complete, in accordance with the Design-Builder Contract(s).
- 1.45 "Work" or "PMC Work" or "Services" means any and all work performed by the PMC hereunder or required to be performed by the PMC to complete the Program.

ARTICLE 2 - General Provisions

- 2.1 General Provisions governing the Contract, including insurance coverage the PMC and its Subcontractors are required to provide, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.
- 2.2 The PMC must comply with the HireNYC Rider. The HireNYC Rider is included as an Exhibit to the Contract.

ARTICLE 3 - Agreement to Serve

- 3.1 The City hereby retains the PMC to perform the Services hereinafter described, on the terms and conditions specified herein, and the PMC agrees to so serve. The PMC agrees to provide, to the satisfaction of the Commissioner, all Services necessary and required for the inspection, management, coordination and administration of the Design-Build Program and all Projects assigned to the Design-Build Program, so that the required design and construction work is properly executed, completed in a timely fashion and conforms to the requirements of the design, construction, and/or design-build contract(s) and to good design and construction practice. The Services to be provided by the PMC will include without limitation the services set forth in Article 6 and Exhibit D. The PMC certifies that it has the necessary experience, expertise, manpower and resources to fulfill its obligations under this Contract competently and efficiently.
- 3.2 The PMC will perform its duties hereunder in conformance with its expert experience and with the very highest standard of care practiced by program and project managers in the New York City metropolitan area with a substantial and noteworthy experience in successfully managing major correctional, industrial, multi-rise, or high-rise, high-profile projects in highly dense urban areas. Nothing to the contrary herein will erode this standard of care, including a requirement that the PMC use its best efforts to comply with any provisions hereof. The PMC agrees to use its best efforts to facilitate timely completion of each Project as soon as possible.

ARTICLE 4 - Time Provisions

- 4.1 Term of the Contract: The Contract will commence as of the date set forth in the Notice to Proceed and will remain in effect until DB Final Acceptance of all required Design-Build Work for the Project(s) and completion of all required Services hereunder, including post construction Services. The anticipated time frame for completion of all required Services is set forth in Exhibit A.

4.2 Program Objectives: The Design-Build Program Objectives are set forth in Exhibit C.

4.3 Extension of Contract: Upon written application by the PMC, the Agency Chief Contracting Officer (“ACCO”) may grant an extension of time for performance of the Contract. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total number of delay in days attributable to such cause. The ruling of the ACCO will be final and binding as to the allowance of an extension and the number of days allowed.

4.4 Time of Essence: In performing Services hereunder, the PMC will place emphasis on considerations which will aid in expediting the completion of each Project consistent with the design and construction standards and procedures of the Design-Build Program. To accomplish such timely completion, the PMC will give constant attention to the adequacy of the Design-Builder’s planning, personnel, equipment and the availability of labor, materials and supplies. The PMC acknowledges that time will be of the essence in bringing the Design-Build Program and each Project to completion and agrees to use its best efforts to prevent delays. If a situation cannot be resolved, the PMC will bring it to the immediate attention of the Commissioner.

4.5 Responsibility for Delay: In the event any Project is not completed within the timeframe set forth in the Design-Build Contract, the Commissioner will prepare a report analyzing the causes of the delay and determining responsibility for the same.

4.5.1 If the report indicates that the PMC, as a result of its actions or inactions, is responsible for the delay, or any portion thereof, the Commissioner will deduct from any amount due and owing to the PMC under this Contract, the total amount of staffing expenses paid to the PMC for the period of the delay, or any portion thereof, for which the Commissioner determines the PMC is responsible. For the purpose of this deduction, staffing expenses means the Direct Salary Rates for all Assigned Personnel times the Multiplier set forth in Exhibit A.

4.5.2 If the amount due and owing to the PMC under this Contract is less than the total amount of staffing expenses paid to the PMC for the period of the delay, or any portion thereof, for which the Commissioner determines the PMC is responsible, the PMC will be liable for and agrees to pay the difference upon demand by the Commissioner.

4.5.3 If the PMC files a dispute regarding its responsibility for the delay, or any portion thereof, the PMC is obligated, while the dispute is pending, to continue performing any required Services pursuant to this Contract, and, if demanded by the Commissioner, to pay the amount described in the paragraph above.

4.5.4 The following will have no relevance to a determination by the Commissioner that the PMC is responsible for the delay, or any portion thereof: (a) approval by the Commissioner of any time extension(s), and/or (2) approval by the Commissioner of any revised Project Schedule. Any such approval(s) by the Commissioner will not be referred to or offered in evidence by the PMC or its attorneys in any dispute or proceeding regarding the PMC’s responsibility for the delay.

4.6 Availability of Funding. This Contract may be funded in intervals. If funding is not approved or registered for any subsequent period during which this Contract is in effect, the Commissioner may phase the Work or may reduce the Work or terminate this Contract without cause.

4.6.1 General Principles and Procedures. The implementation of this Contract is subject to the availability of funds adequate to carry out the provisions of this Contract in full. The City anticipates that sufficient funds will be made available to carry out the full scope of the Work and to make all payments owing to the PMC hereunder. However, if the Commissioner determines that there will be a lack of adequate funding available for the Work, or delay in the availability or receipt of such funding, the City reserves the right to phase the Work or may reduce the Work or terminate this Contract without cause. If the Commissioner chooses to reduce the Work or terminate the Contract without cause, such reduction or termination will be accomplished in accordance with Article 10 of Appendix A. If the Commissioner chooses to phase the Work, the Commissioner will notify the PMC in writing of the date that such reduction or phasing is to be effective and the PMC will, within fifteen (15) days after notice, submit to the Commissioner a written plan to phase the Work, in compliance with any direction included in the notice. The PMC and the Commissioner agree to negotiate a reasonable plan to carry out the phasing of the Work, which plan and negotiations should address any cost and/or schedule impacts that result from the amount of available funding. If an agreement cannot be reached, the PMC will proceed as directed by the Commissioner.

4.6.2 Specific Conditions and Requirements. In the event the Commissioner makes the determination and provides the notice described in Section 4.6.1 above, the following conditions and requirements will apply:

- (a) No legal liability on the part of the City for any payment may arise for performance under this Contract until funds are made available for such performance and until the PMC receives a written notice of such availability from the Commissioner.
- (b) The PMC may not be required to perform Services at risk in the event that funding for such Services is unavailable.
- (c) Any delay or interruption of the Work arising from exhaustion of available funds or the reasonable anticipated exhaustion of available funds allotted to this Contract, or from a delay on the availability of funds or receipt of funds, will not constitute a breach of this Contract and will not entitle the Contractor to any price adjustment. The PMC may

be entitled to an extension of time for performance if performance is delayed by phasing of the Work.

ARTICLE 5 - The PMC's Personnel

5.1 General: The PMC agrees, throughout the term of the Contract, to provide personnel to facilitate timely completion of each Project in accordance with the Design-Build Program standards and each Design-Build Contract, as directed by the Commissioner. The PMC specifically agrees that its employees, agents and Subcontractors possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. Minimum Title Requirements are set forth in Exhibit E. The Minimum Title Requirements are subject to change in the Commissioner's sole discretion.

5.2 Staffing Plan: The PMC will provide personnel in accordance with the final approved Staffing Plan. Prior to finalization, the Staffing Plan is subject to review and approval by the Commissioner in accordance with the process described below. The preliminary Staffing Plan submitted by the PMC as part of its Proposal for the Contract is set forth in Exhibit B.

5.2.1 Contents of Staffing Plan: The PMC's Staffing Plan will include the items set forth below.

- (a) Contract Executive, identified by the PMC in its Proposal for the Contract
- (b) Key Personnel: Required titles of Key Personnel and specific individual for each title identified by the PMC in its Proposal for the Contract
- (c) Other PMC Personnel: Required titles and specific individual for each title
- (d) Direct Salary Rate per hour for each specified individual (except Contract Executive), determined by the Commissioner in accordance with Article 7
- (e) Total estimated amount for all required titles
- (f) An organization chart for all PMC personnel

5.2.2 Limitations on Payment: The specific individuals identified in the Staffing Plan, except for any Contract Executive(s), will be considered assigned personnel for the purpose of the PMC's entitlement to payment for services performed by such individuals in accordance with Article 7. As specified therein, the PMC will not be entitled to payment for staffing expenses for: (1) any Contract Executive(s), and (2) any individual not included in the approved Staffing Plan.

5.2.3 Contract Executive: The Contract Executive, identified in Exhibit B, will serve as the PMC's principal representative with respect to its obligations hereunder. Such Contract Executive will be responsible for assigning personnel and for providing, on an as needed basis, executive or management expertise and oversight with respect to the Design-Build Program. The PMC will not be entitled to payment for Services provided by any Contract Executive(s). Compensation for Services provided by any Contract Executive(s) is deemed included in the Multiplier. The Contract Executive will, at all times throughout the term of the Agreement, be a principal or officer of the PMC.

(a) If the Contract Executive identified in Exhibit B loses status as a principal or officer of the PMC, for whatever reason, the PMC will provide resumes and other requested information on alternative qualified principals and/or officers of the PMC. The PMC will designate the alternative principal or officer selected by the Commissioner as Contract Executive for the Design-Build Program.

(b) The Contract Executive may be required to attend high-level Program and public meetings, evaluation meetings regarding the PMC's performance, and other meetings or events, as requested by the Commissioner.

5.2.4 Program Manager: The Program Manager, identified in Exhibit B, will serve as the PMC's day-to-day manager with respect to all Services provided by the PMC hereunder.

5.2.5 Key Program and Project Management Personnel: The Key Personnel, identified in Exhibit B, will provide all Services necessary and required for the inspection, supervision, management, coordination and administration of the Design-Build Program and each Project, so the required Design-Build Work is properly executed, completed in a timely fashion and conforms to the requirements of the Design-Build Program Requirements and the Construction Documents for each Project, as well as to good design and construction practice. Key Personnel, other than the Program Manager, may be employees or Subconsultants of the PMC.

5.2.6 Agreement to Assign: The PMC specifically agrees to assign to the Program the specific individuals identified in Exhibit B as the Contract Executive, Program Manager and other Key Personnel. These individuals were identified by the PMC in its Proposal for the Contract. Failure by the PMC to provide any of the individuals identified in the Staffing Plan as Contract Executive and/or Key Personnel will be considered a material breach of the Contract and grounds for termination for cause. Subject to the terms and conditions set forth below, replacement of such Contract Executive, Program Manager and/or Key Personnel will only be permitted in the following circumstances: (1) if the designated individual is no longer employed by the PMC, (2) the PMC is directed to replace such individual(s) by the Commissioner in accordance with Article 5.2.10, or (3) if the City does not direct the PMC to commence work on the Contract within one (1) year of the date on

which the PMC submitted its Proposal for the Contract. Replacement of such Contract Executive, Program Manager, and/or Key Personnel must comply with the conditions set forth below.

- (A) **Program Manager Minimum Time Commitment.** The Program Manager must be dedicated exclusively to the Program, with a minimum four (4) year commitment to the position. The Program Manager must be an employee of the PMC. The PMC agrees that the individual serving as Program Manager will not be proposed or assigned to other projects and will not work on other projects while serving as Program Manager for the Design-Build Program.
- (B) **Substitution of the Program Manager.** It is imperative that the Program Manager identified in the PMC's Proposal remain on the Program for the minimum time commitment set forth above. Substitution of the Program Manager by the PMC prior to the expiration of such term, will result in the assessment of a Key Personnel Change Assessment Fee in the amount of \$50,000, regardless of whether the City accepts the alternate personnel as equal or better. The Commissioner may waive, in their sole discretion, such Assessment Fee for good cause shown, which cause will include, without limitation, termination for cause (including violation of the PMC's sexual harassment, drug, or violence in the workplace policies or other similar bad act), retirement or resignation, death, disability or leave provided in accordance with applicable Law. "Good cause shown" will not include performance of services on other projects.
- (C) **Changes in Key Personnel.** The PMC acknowledges that changes to the Key Personnel will be disruptive and costly for the Program. Changes to the Key Personnel at any time, or to the Program Manager after the minimum time commitment set forth above, will result in a Key Personnel Change Assessment Fee in the amount of \$15,000 for each change, regardless of whether the City accepts the alternate personnel as equal or better. For each subsequent change for the same Key Personnel in any three (3) year period, including the Program Manager, such Key Personnel Change Assessment Fee will be increased by the sum of \$5,000 and the increase will be cumulative. For example, change 1 = \$15,000, change 2 = \$20,000, change 3 = \$25,000. The Commissioner may waive, in their sole discretion, such Assessment Fee for good cause shown, which cause will include, without limitation, termination for cause (including violation of the PMC's sexual harassment, drug, or violence in the workplace policies or other similar bad act), retirement or resignation, death, disability or leave provided in accordance with applicable Law. "Good cause shown" will not include performance of services on other projects.
- (D) The City may deduct and retain any and all amounts due as Key Personnel Change Assessment Fees out of any amounts due and owing to the PMC. In the event the amount due and owing to the PMC is less than the amount of such fees, the PMC will be liable to pay the difference upon demand by the Commissioner.

5.2.7 **Other Program and Project Management Personnel:** In addition to the Key Personnel, other PMC personnel were identified by the PMC in its Proposal for the Contract. Such other personnel will provide Services that are supportive or ancillary to the Services provided by the Key Personnel. Replacement of such PMC personnel must comply with the conditions set forth below.

5.2.8 **Proposed Staffing Plan:** Within five (5) business days of a written request from the Commissioner, the PMC will submit a proposed Staffing Plan for the Program. Such Staffing Plan will include the items listed above. With respect to each individual, the PMC will provide: (1) the individual's resume, as well as any other information detailing their technical qualifications and expertise, and (2) direct salary information, including the individual's current actual annual direct salary, as defined in Article 7, and direct salary history for the past three years.

5.2.9 **Review and Approval of Staffing Plan:** The Commissioner will review the PMC's proposed Staffing Plan and will direct revisions to the same if necessary prior to final approval thereof. As part of their review, the Commissioner will determine the following: (1) whether the Staffing Plan includes the individuals identified by the PMC as Key Personnel its Proposal for the Contract, (2) whether each specific individual is qualified for the applicable title, and (3) the direct salary rate per hour to be paid for each specific individual, computed in accordance with Article 7. The PMC will revise the Staffing Plan as directed, until such plan is approved in writing by the Commissioner.

5.2.10 **Revisions to PMC Personnel and the Staffing Plan:** Any revisions to the Staffing Plan must be specifically requested in writing by the PMC, if not directed by the Commissioner, and approved in writing by the Commissioner.

- (a) **Replacement Personnel:** No substitutions for assigned personnel will be permitted unless the proposed replacement has received the prior written approval of the Commissioner. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced and, in any event, with qualifications meeting the minimum requirements, if any, set by the Commissioner. As set forth above, replacement of the Program Manager and/or other Key Personnel will only be permitted under the circumstances, and subject to the terms and conditions, set forth in Article 5.2.6.
- (b) **Changes by the Commissioner:** The Commissioner reserves the right to direct changes to the Staffing Plan,

including without limitation, modifying the titles and/or minimum requirements of personnel necessary for the Program and increasing or decreasing the personnel assigned to the Program, based upon the scope of the required Work. The PMC will increase or decrease the personnel assigned to the Program, as directed by the Commissioner.

- (c) Removal of Personnel: At the Commissioner's request at any time, the PMC will remove any personnel and substitute another employee of the PMC reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in their sole discretion. The Commissioner will not be required to furnish a reason for requesting such substitution. A Key Personnel Change Fee will not be charged where removal is directed by the Commissioner.
- (d) Revisions Due to Delay: In the event completion of a Project is delayed for any reason, including without limitation, strike, work stoppage, severe weather conditions or other circumstances not due to the fault of the PMC, the Commissioner will, in writing, direct revisions to the Staffing Plan to decrease the level of staffing to be maintained throughout the delay. The PMC will be paid for the cost of the staffing it is directed by the Commissioner to maintain. Upon termination of the delay, the PMC will restore the level of staffing as directed by the Commissioner.

5.3 Night Differential / Overtime: The PMC will provide a statement describing its company policy with respect to payment of a premium for Services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime). The PMC's statement describing its policy will indicate the following: (1) whether the policy is consistently applied to all clients; (2) the designated class(s) of employees to whom such policy applies, and (3) the premium or rate of increase to be paid to employees for such Services. For the purpose of payment, the PMC's policy regarding payment of a premium for Services performed during other than regular business hours is subject to approval by the Commissioner. Approval will only be given if the policy is reasonable, consistently applied to all clients and in accordance with standard practice in the industry. Payment of a premium for Services performed during other than regular business hours is subject to the limitation set forth in Article 7.

5.4 Subcontractors: The PMC will engage the Subcontractor(s) identified in its Proposal for the Contract and set forth in Exhibit A, unless otherwise approved by the Commissioner. Failure by the PMC to provide the Subcontractor(s) set forth in Exhibit A will be grounds for termination for cause. The PMC will be responsible for the performance of Services by its Subcontractor(s), including maintenance of schedules, correlation of their work and resolution of all differences between them.

5.4.1 General Provisions: General Provisions governing the Contract, including provisions requiring the approval of Subcontractors, are set forth in Appendix A. Appendix A is included as an Exhibit to the Contract.

5.4.2 Replacement Subcontractors: No substitution for any Subcontractor will be permitted unless approved by the Commissioner. Any proposed replacement Subcontractor must possess qualifications and experience substantially similar to those of the Subcontractor being replaced and is subject to the prior written approval of the Commissioner. In addition, at the Commissioner's request at any time, the PMC will remove any Subcontractor and substitute another Subcontractor reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in their sole discretion. The Commissioner will not be required to furnish a reason for requesting such substitution.

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

ARTICLE 6 – Program and Project Management Services

6.1 General: The PMC will provide, to the satisfaction of the Commissioner, the Services set forth in this Article 6 and Exhibit D.

6.2 PMC's Duties, Generally.

6.2.1 The PMC will have responsibility for proper and efficient management of the Program and each Project, whether or not the details of those management responsibilities are further specified elsewhere in this Agreement. The PMC's responsibilities will include, without limitation, the employment of or subcontracting for all necessary professionals, technicians, architects and engineers, properly qualified, licensed and skilled in the various aspects of the PMC Work and the performance of all Services reasonably inferable from the Contract Documents. The PMC will manage, direct, supervise, coordinate and cooperate with the Design-Builders, and any Consultants, in furthering the best interests of the City with respect to the Program and each Project.

6.2.2 The PMC will (a) carry out its Services for the Design-Build Program and on each Project in conformance with all requirements of this Agreement, including the Exhibits hereto; (b) require all Subcontractors to comply with all such

requirements that relate to their work; and (c) monitor such performance, the Design-Build Program and each Project to see that these obligations are met.

6.2.3 The PMC will perform, and will cause its Subconsultants to perform, the PMC Work in cooperation with the City, the Design-Builder(s), the Consultants, and each of their respective consultants, contractors, subcontractors, suppliers and materialmen performing Services or providing supplies, equipment and materials in connection with the Program and each Project, so that all are performed in a harmonious manner. The PMC, when requested, will review the operations and contract schedules of others or facilitate a joint review among relevant parties and will endeavor to provide that the activities of all are carried out in a proper and appropriate sequence for the best interests of the Program and each Project. Nothing in this Agreement will create any obligation or contractual relationship between the PMC and any third party, including the Design-Builder(s) and Consultant(s).

6.2.4 The PMC will, to the extent described herein and as directed by the Commissioner, assume and perform the duties of the Department as will be set forth in the final Design-Build Contract(s). Notwithstanding the foregoing, the PMC will not: (1) have authority to enter into any amendments, change orders, or other binding arrangements on behalf of the City in connection with the Design-Build Contract(s); or (2) take any action that, under such Design-Build Contract(s), may result in (a) the granting of additional compensation or time for performance, (b) a modification to the quality of the Project or the work to be performed, or (c) a change in the safety or security requirements.

6.2.5 The City reserves the right to perform through its own forces or by awarding contracts to a Consultant(s) other than the PMC to perform program and/or project management services, partially or in their entirety, for any or all Projects. In such case(s), the PMC will continue such program management Services and such project management Services not otherwise awarded and will provide such other program and project management support Services as directed. The PMC will cooperate fully with the City and any such Consultant.

6.3 Architecture, Engineering and Laboratory Testing.

6.3.1 Any professional services regulated by Articles 145, 147, and 148 of the NYS Education Law must be performed and stamped and sealed, where appropriate, by a professional licensed in accordance with such Articles. The terms and provisions of this Article 6.3 will control and supersede every other provision of the Contract Documents with respect to this issue. All design and engineering deliverable materials submitted for approval of the City must be dated, signed and sealed by a licensed professional architect or engineer, as applicable, registered in the State.

6.3.2 The PMC may be tasked with providing professional Services through appropriately licensed personnel. The PMC will have no liability for changes made to its stamped and sealed deliverable materials hereunder (e.g., drawings, specifications, and other documents) by Consultants or the Design-Builders.

6.3.3 The PMC will not be liable for the design errors or omissions of any Design-Builder.

6.4 Inspection and Acceptance of PMC Services.

6.4.1 All Services will be subject to review by the City at all reasonable times and places prior to acceptance. Any such review is for the sole benefit of the City and will not relieve the PMC of the responsibility of providing top quality Services that comply with its obligations under the Agreement.

6.4.2 The PMC will, without charge, correct or re-perform any Services found by the City not to conform to this Agreement's requirements, unless the City consents in writing to accept such Services with an appropriate adjustment in the contract price.

6.4.3 If the PMC fails to correct or re-perform any Services not found to conform to the contract requirements within a reasonable period of time after written notice to the PMC, the City will have the right to self-perform those Services and charge back the cost to correct or re-perform those Services to the PMC. The Commissioner may deduct such amounts from any other amounts due and payable to the PMC; in case the amount which may become due under this Contract will be less than the costs incurred by the City, the PMC will be liable to pay the difference.

6.4.4 PMC Final acceptance of all Services does not occur until final payment is made by the City to the PMC for all Services performed under this Agreement.

6.5 Reimbursable Services: The PMC may be directed by the Commissioner to provide Reimbursable Services for the Project. If so directed, the PMC will provide such Reimbursable Services through entities approved by the Commissioner. Payment for Reimbursable Services will be in accordance with the terms and conditions set forth in Article 7.

6.5.1 No Reimbursable Services will be provided by the PMC, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$500, such written authorization must be provided in advance of the expenditure.

6.5.2 The PMC will utilize the method of procurement directed by the Commissioner. If so directed, the PMC will conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process

will be required if the cost of the specified Reimbursable Service exceeds \$20,000.

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

6.5.4 Reimbursable Services will be such services determined by the Commissioner to be necessary for the Program, and may include, without limitation, the services set forth below.

- (a) Provision of a Site field office for any Project, or other office directed by the Commissioner that is not the PMC's home or branch offices or the Program Office, and all items provided for such office
- (b) Professional printing costs from third-party vendors
- (c) When such services are requested by the Commissioner in writing: overnight delivery, messenger services, and express mail postage, excluding deliveries, messenger, or mail services between DDC and the PMC
- (d) Laboratory services for testing of materials and/or items of Design-Build Work
- (e) Purchase of long lead items for the Design-Build Work
- (f) Performance of Design-Build Contract general conditions items
- (g) Long distance travel. In the event the PMC is directed in advance in writing by the Commissioner to provide services which require long distance travel, the PMC will be reimbursed for expenses incurred in connection with such long-distance travel. Long distance travel means travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) the PMC's home office. Reimbursement for long distance travel expenses will be as set forth in Article 7. Long distance travel will not include travel expenses for the PMC and/or any Subconsultants that are not located in New York City or its vicinity.
- (h) Equipment and devices for City personnel use, including such equipment and devices required for the Program Office and designated in Exhibit G as a Reimbursable Service.
- (i) Any other services, determined by the Commissioner to be necessary for the Program.

6.5.5 In the event the PMC is directed, as a Reimbursable Service, to purchase any items and/or equipment, except Non-Reimbursable Services set forth in Article 6.5.6, such items and/or equipment will, unless otherwise directed by the Commissioner, be the sole property of the City upon delivery to the designated location. The PMC will prepare and maintain an accurate inventory of all items and/or equipment which it is directed to purchase pursuant to the Allowance for Reimbursable Services. Such inventory will be provided to the City upon request. Upon completion of the required work, as directed by the Commissioner, the PMC will turn such items and/or equipment over to the City with a copy of the PMC's books and records with regard to such items and/or equipment.

6.5.6 Non-Reimbursable Services: Throughout the Contract, the PMC will be responsible for providing the non-reimbursable items and/or Services set forth below. All costs for providing such items and/or Services are deemed included in the Multiplier or Program Office fees.

- (a) Transportation: The PMC will provide transportation for all personnel performing Services, including without limitation: (1) expenses for ordinary transportation (i.e., other than long distance travel, as set forth in Article 6.5.4(g)), (2) expenses for time spent by personnel commuting or traveling, and (3) expenses for parking and tolls. PMC personnel and/or Subconsultants that are not located in New York City or its vicinity will not be entitled to reimbursement for transportation expenses to New York City.
- (b) Equipment: The PMC will provide the items set forth below for all PMC personnel performing Services, including any Contract Executive(s).
 - (1) All computer hardware and software necessary for the PMC to perform the required Services, including but not limited to, printing and reproduction equipment for the Program Office, CADD equipment and software, BIM equipment and software, Data Management Services equipment and software, and computer and internet usage time and monthly costs thereof.
 - (2) All necessary office supplies and/or tools
 - (3) Communications equipment and service, including without limitation cellular telephones. The telephone numbers of all personnel will be submitted to the Commissioner.
 - (4) Tablets and other mobile office equipment;
 - (5) Hard hats, safety vests, and all other necessary and required Personal Protective Equipment (P.P.E.).
- (c) In the event the PMC is directed in advance in writing by the Commissioner to provide Services which require

long distance travel, the PMC will be reimbursed for expenses incurred in connection with such long-distance travel. Long distance travel is defined in Article 6.5.4(g).

- (d) All printing costs for documents and reports printed by the PMC's own forces or in the Program Office.
- (e) Any deliveries, messenger, or mail services between DDC and the PMC.

6.6 **Communications in Writing:** All recommendations and communications by the PMC to the Commissioner that will affect the cost of the Program and any or all Projects will be made or confirmed by the PMC in writing. The Commissioner may also require other recommendations and communications by the PMC to be made or confirmed by the PMC in writing. All recommendations relating to proposed changes in the work, work schedules, instructions or comments to Design-Builder(s) and all other matters requiring action by the Commissioner and the Design-Builder(s) will be made directly to the Commissioner, unless otherwise directed by the Commissioner. Protocol for such communications, including standard formatting and forms, will be set forth in the Design-Build Manual. The PMC will retain copies of all such communications

6.7 **Ownership of Documents:** As set forth in the General Provisions (Appendix A), any reports, documents, drawings, models (including, without limitation, BIMs), records, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials related to such items produced pursuant to this Agreement, in any format, whether in hard copy or digital form (i.e., in the form of BIMs), will upon their creation become the exclusive property of the City.

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

6.8 **Patented and Proprietary Items:** The PMC will not, without the prior written approval of the Commissioner, specify or require for the Program or any 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. The PMC will establish an efficient protocol for the approval of such patented or controlled items.

ARTICLE 7 - Payment Terms and Conditions

7.1 General

7.1.1 **Total Payments:** Total payments for all Services performed and all expenses incurred pursuant to this Agreement will not exceed the amount set forth in Exhibit A.

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

7.1.3 **Allowances:** In the event the allowance amounts described in this Article are not sufficient, as determined by the Commissioner, to cover the cost of the items of required Work for which allowance amounts are specified, the City will increase the amounts of such allowances. Notwithstanding the specific amounts allocated for allowances, as set forth in Exhibit A, the Commissioner may, by issuance of a "No Cost Change Order" to the PMC, reallocate such specific allowance amounts within this Article 7.

7.1.4 **Requisitions:** Payment requisitions will be accompanied by the documentation set forth in Article 7.6.

7.2 Staffing Expenses

7.2.1 **General:** An Allowance in the amount set forth in Exhibit A is established for payment of the PMC's staffing expenses for those individuals who have been assigned to the Program and are identified in the Staffing Plan approved by the Commissioner.

7.2.2 **Limitations on Payment:** Payment for staffing expenses is subject to the limitations set forth below.

- (a) **Inclusion in Staffing Plan:** The PMC will not be entitled to payment for any individual not included in the approved Staffing Plan. The specific individuals identified in the approved Staffing Plan, whether such individuals are the PMC's employee or Subcontractors, will be considered Assigned Personnel for the purpose of the PMC's entitlement to payment for Services performed by such individuals.

- (b) Contract Executive: The PMC will not be entitled to payment for the Services of the Contract Executive. Compensation for the Contract Executive is deemed included in the Multiplier.

7.2.3 Payment: For any week during which an Assigned Personnel performs Services for the Program, payment to the PMC for such employee's Services for that week will be calculated as follows: Multiply the amount set forth in paragraph (a) by the number set forth in paragraph (b), and then multiply the result by the Multiplier set forth in Exhibit A; provided, however, such Multiplier will **NOT** apply to any increase in the Assigned Personnel's Direct Salary Rate per hour for authorized Services performed during other than regular business hours.

- (a) Assigned Personnel's Direct Salary Rate per hour, determined and approved in writing by the Commissioner in accordance with the provisions set forth below. In the event the PMC receives written authorization from the Commissioner to have the Assigned Personnel perform Services during other than regular business hours, the employee's Direct Salary Rate per hour may be subject to an increase, as provided below.
- (b) Total number of hours set forth on time sheets completed by the Assigned Personnel for the week(s) in question during which the Assigned Personnel actually performed Services for this Project. This total number of hours will **NOT** include the following: (1) any hours the Assigned Personnel spent commuting; (2) any non-billable hours, as defined below; (3) any hours during which the Assigned Personnel performed Services for any other project; (4) any hours the Assigned Personnel spent performing Services for the Program for which the PMC is not entitled to compensation, and (5) any non-regular business hours, unless otherwise authorized in advance, in writing by the Commissioner.
- (c) Non-billable hours will be defined as any hours set forth on time sheets completed by the Assigned Personnel which have been allocated to any category or function other than Services performed for this Project. Non-billable hours will include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.
- (d) The costs deemed included in the Multiplier are set forth in Article 7.2.8 below.

7.2.4 Equitable Reduction: The amount of payment to the PMC for Services performed for the Program by an Assigned Personnel, calculated as set forth above, will be subject to an equitable reduction if, for the week during which an Assigned Personnel performed Services for the Program, the total number of hours for which the Assigned Personnel was actually paid by the PMC for that week, less any non-billable hours, is less than the total number of hours actually billed by the PMC to all entities for the Assigned Personnel's Services for that week, including the number of hours billed for this Project. In such event, the amount of payment to the PMC for Services performed by an Assigned Personnel for the week in question, calculated as set forth above, will be reduced by multiplying such amount by the following: the fractional number resulting from the division of the number set forth in item (a) below by the number set forth in item (b).

- (a) Total number of hours for which the Assigned Personnel was actually paid by the PMC for the week in question, less any non-billable hours, as defined above.
- (b) Total number of hours actually billed by the PMC to all entities for the Assigned Personnel's Services for the week in question, including the number of hours billed for this Program

7.2.5 Direct Salary Rate Per Hour: The Direct Salary Rate per hour for each Assigned Personnel will be determined and approved in writing by the Commissioner, as set forth below. Upon approval by the Commissioner, the Approved Direct Salary Rate Per Hour for each Assigned Personnel will be included in the Staffing Plan.

- (a) Actual Annual Direct Salary Rate per Hour: For each Assigned Personnel, the PMC will submit the items set forth below. The PMC will also submit any records or documentation requested by the Commissioner to verify the Assigned Personnel's actual annual direct salary, including without limitation, the PMC's payroll register for the past twelve (12) months.
- (1) Actual Annual Direct Salary: The Assigned Personnel's actual annual direct salary will be the salary amount directly payable to such employee on an annual basis and will **NOT INCLUDE** any amount for the following costs or payments: (1) any payments for Services performed during other than regular business hours (i.e., premium for Night Differential and/or Overtime); (2) any employer payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) any employer contributions to retirement plans, including without limitation pension and/or deferred compensation plans, and (4) any costs for any other fringe and/or supplemental benefits.
- (2) Computation: The Assigned Personnel's actual annual direct salary rate per hour will be computed as follows: The Assigned Personnel's actual annual direct salary, as defined above, divided by 2080.

- (b) Determination of Direct Salary Rate: For each Assigned Personnel, the Commissioner will determine and approve in writing the Direct Salary Rate per hour to be paid for such employee.
- (1) Once determined and approved by the Commissioner as set forth above, the Assigned Personnel's Direct Salary Rate per hour will not be eligible for any increase whatsoever, except for the increase described in Article 7.2.6 below. Any such increase must be approved in writing by the Commissioner.
 - (2) The Direct Salary Rate per hour for an Assigned Personnel, determined and approved by the Commissioner, may be adjusted in accordance with Article 7.2.6 below, in the event the PMC receives written authorization from the Commissioner in the particular instance to have the Assigned Personnel perform Services during other than regular business hours.

7.2.6 Increases:

- (a) An Assigned Personnel's Approved Direct Salary Rate Per Hour, as determined in Article 7.2.5, will be adjusted subject to the following terms and conditions:
- (1) Cost Index Increases. Except where another increase has been applied to the same Assigned Personnel in the same contract year in accordance with this Article, an Assigned Personnel's Approved Direct Salary Rate Per Hour (as determined in Article 7.2.5), will be subject to an increase on a yearly basis, subject to the following limitations. The first such increase will be made one (1) year after the Commencement Date, and thereafter, for the remainder of the term of the Contract, including the extended term, on a yearly basis, on the anniversary of the Commencement Date. Any increase in the Direct Salary Rate(s) will be based on whatever increase may have occurred in the Consumer Price Index, All Urban Consumers (CPI-U) 1982-84=100 Series (Series ID: CUUR0000SA0), as reported by the U.S. Department of Labor, Bureau of Labor Statistics, for all items, U.S. city average (the "Index"), as determined by the Engineering Audit Office ("EAO"). If for the prior year, EAO determines that the Index showed an increase, the Approved Direct Salary Rate(s) Per Hour will be permitted to increase. If, for the prior year, EAO determines that the Index declined or showed no increase, the Direct Salary Rate(s) will remain unchanged.
 - (2) Other Increases. The PMC may request an increase in the Approved Direct Salary Rate Per Hour for any Assigned Personnel once per contract year, with the first such increase being no earlier than one (1) year after the Commencement Date. The PMC's application must be in writing and set forth the Assigned Personnel's name, title, duties, current Approved Direct Salary Rate Per Hour, proposed Direct Salary Rate per hour, the percentage increase, and must include a written justification for the proposed increase that demonstrates that the increase is (A) in accordance with the PMC's typical program of periodic merit increases or employee retention policies; (B) based on increases in salaries and billing rates which are generally applicable to all of the PMC's clients; or (C) other circumstances exist that warrant an increase in the Assigned Personnel's Approved Direct Salary Rate Per Hour. If so requested, the PMC will provide any other information requested by the Commissioner. The Commissioner may approve or deny such increase in their sole and absolute discretion and, if approved, will issue such approval in writing.
 - (3) The PMC may apply for an increase in accordance with paragraph (2), above, in addition to any increase permitted in accordance with paragraph (1), above, in the same contract year.
- (b) The PMC will not be entitled to payment of any increase in an Assigned Personnel's Approved Direct Salary Rate per hour unless the amount of such increase is actually paid in full by the PMC to the Assigned Personnel, as determined by the Commissioner. The PMC will submit its payroll register to verify the amount actually paid by the PMC to the Assigned Personnel.
- (c) Any increase in an Assigned Personnel's Direct Salary Rate that is in excess of the applicable increase(s) specified above will not be payable hereunder, even if paid by the PMC.
- (d) Any increase in the Direct Salary Rate(s) will be applied on a prospective basis only and will have no impact on the rate paid to date.

7.2.7 Night Differential / Overtime: The Commissioner may authorize the PMC in advance in writing to have an Assigned Personnel perform Services during other than regular business hours. In the event of such authorization, the PMC will be entitled to payment of a premium or increase in the Assigned Personnel's Direct Salary Rate per hour for such

Services, subject to the limitations set forth below. Any premium or increase payable hereunder will not be subject any Multiplier.

- (a) The PMC's policy is subject to approval by the Commissioner in accordance with Article 5.
- (b) The premium for Night Differential will not exceed ten (10%) percent of the Assigned Personnel's Direct Salary Rate per hour, and the premium for Overtime will not exceed fifty (50%) percent of such Direct Salary Rate.
- (c) The PMC will not be entitled to payment of any premium unless the total amount of such premium is actually paid in full by the PMC to the Assigned Personnel, as evidenced by the PMC's payroll register.

7.2.8 Multiplier:

(a) General. The Multiplier set forth in Exhibit A will be deemed to include all costs and expenses for overhead incurred and all profit earned by the PMC in connection with providing Services for the Program, including expenses for management and administration. The PMC agrees to make no claim for overhead expenses or profit in excess of the Multiplier provided for herein. The Multiplier will include, without limitation, the items of overhead and profit set forth below:

- (i) All expenses for compensation paid to personnel of the PMC (other than PMC personnel identified in the approved Staffing Plan, except for the Contract Executive). Such other personnel of the PMC will include without limitation all officers, principals, employees and personnel of the PMC, serving in whatever capacity, including any Contract Executive(s). Compensation for such other personnel is deemed included in the Multiplier. Compensation will include without limitation: (1) wages and/or salaries; (2) all payments mandated by law, including without limitation, Social Security and Medicare taxes, insurance (Worker's Compensation, Employers Liability, Unemployment); (3) employer contributions, if any, to retirement plans, including without limitation pension and/or deferred compensation plans; (4) all payments for compensated absence time, including without limitation vacation time, sick time, personal time and holidays, and (5) costs for any and all other fringe and/or supplemental benefits.
 - (ii) All expenses for compensation paid to Assigned Personnel identified in the approved Staffing Plan that are in excess of compensation for such personnel payable hereunder. Compensation for such personnel will include without limitation the items listed in item (i) above.
 - (iii) All expenses in connection with the performance of Services, including without limitation: (1) expenses for non-reimbursable Services, as set forth in Article 6, (2) meals, and (3) lodging.
 - (iv) All expenses for home office general facilities, including, but not limited to, rental cost or depreciation factor, light, heat and water, telephone charges, including all charges for calls to the job site and DDC (except for long distance calls to other locations as specifically required by the Commissioner), sales, accounting fees and bookkeeping expenses, electronic data processing Services, including programming and rental equipment, dues and subscriptions, stationery, printing, copying, postage, and any other office expenses or overhead costs, except as otherwise expressly provided in this Agreement.
 - (v) All expenses for applicable taxes of any kind whatsoever, including without limitation, federal, state and local income tax and any franchise or other business taxes.
 - (vi) All expenses for insurance coverage determined by the PMC to be necessary for the performance of all required Services hereunder, including without limitation: (1) all insurance required by this Contract; (2) all insurance required by law, and (3) all other insurance maintained by the PMC, including without limitation, burglary and theft, general fidelity and payroll insurance.
 - (vii) All expenses in connection with losses due to theft or robbery sustained by PMC.
 - (viii) All expenses in connection with fixed capital or moneys borrowed, including interest.
 - (ix) All expenses with respect to legal services.
 - (x) All management, administrative or overhead expenses of any kind whatsoever, including such expenses in connection with providing Reimbursable Services.
 - (xi) Profit.
- (b) Adjustment of the Multiplier. The Multiplier set forth in Exhibit A may be subject to adjustment at the times, and in accordance with the terms and conditions, set forth below.
- (i) Within sixty (60) Days of the 3rd anniversary of the Commencement Date, and every 3rd anniversary

thereafter, the PMC may request an adjustment of the Multiplier. The PMC's request will be in writing and must include all materials and records necessary and/or requested to demonstrate that, using the PMC's standard cost accounting and generally accepted accounting principles, the PMC's allowable overhead costs have increased since the Agreement was executed or, if applicable, since the effective date of the last adjustment to the Multiplier. The Commissioner may request such additional information or documents it deems necessary and appropriate to its determination and may require that the PMC provide City finance and auditing personnel access to the PMC's books and records. Failure to provide such information, documentation or full access will be grounds for denial.

- (ii) Such application must include a statement of the current Multiplier, the proposed adjustment and adjusted Multiplier, and an estimate, with all assumptions, inputs, and calculations clearly demonstrated, of the increased cost to the City of the adjusted Multiplier for the following one (1) year period and the total remaining estimated term of the Agreement. The PMC may be directed to revise and/or correct its estimate and will submit revisions and/or corrections within thirty (30) Days of such direction.
- (iii) The application must also include the PMC's audited Statement of Direct Labor, Fringe Benefits and General Overhead prepared in accordance with Part 31 of the Federal Acquisition Regulation for the three (3) most recent fiscal years, using the PMC's standard fiscal calendar.
- (iv) The application must also include a statement disclosing whether the PMC has had an audited multiplier for overhead accepted by a local, state or federal entity within the three (3) most recent fiscal years, or a statement disclaiming any such circumstances. If the PMC has had an audited multiplier for overhead accepted by a local, state or federal entity within the three (3) most recent fiscal years, the PMC must submit such multiplier(s) and a copy of the letter or other documents from the accepting entity demonstrating such acceptance.
- (v) If the Commissioner, in their sole discretion, determines that an adjustment of the Multiplier is fair and reasonable, the Multiplier will be adjusted as set forth in the Commissioner's determination, except that, the maximum increase for any anniversary will be equal to the lower of (a) the average change in the Index (as defined in Article 7.2.6) over the 12-month period preceding the month in which the applicable anniversary of the Commencement Date occurs; and (b) two percent (2%). The adjusted multiplier set forth in the Commissioner's written determination will become the Multiplier as of the date of such determination. Any adjustment to the Multiplier will be applied on a prospective basis only and will have no impact on the rate paid to date.
- (vi) Failure of the PMC to strictly comply with the terms and conditions set forth above, including but not limited to requirements for timely submission of the application for an adjustment, will be deemed a waiver of the PMC's right to seek an adjustment to the Multiplier for that particular anniversary year. The Commissioner will have no right to adjust the Multiplier if an application for an adjustment is not made by the PMC, as set forth herein.

7.2.9 Representations: With respect to staffing expenses, the PMC covenants and represents the following: (1) it will incur only those staffing expenses which are necessary and reasonable, based on standard practice in the construction industry, to complete the Program, and (2) it will ensure that staffing expenses do not exceed the Allowance for Staffing Expenses set forth in Exhibit A. Any deviations or anticipated deviations from the Allowance for Staffing Expenses, even those deviations which do not involve an increase in such allowance, will not be paid, unless approved in advance in writing by the Commissioner.

7.3 Allowance for Reimbursable Services

7.3.1 General: An allowance in the amount set forth in Exhibit A is established for payment for Reimbursable Services, as set forth in Article 6. In providing Reimbursable Services, the PMC will comply with all terms and conditions set forth in Article 6, including utilization of the method of procurement and form of payment directed by the Commissioner. If so directed, the PMC will conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$20,000.

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

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

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

7.3.4 No Mark Up: The PMC will not be entitled to any mark-up for overhead and profit on payments for Reimbursable Services. All costs and expenses for overhead and/or profit in connection with the provision of Reimbursable Services are deemed included in the Multiplier.

7.3.5 In the event the Commissioner directs the PMC to provide Reimbursable Services and such Reimbursable Services require the PMC, through Assigned Personnel, to provide technical or professional Services, the PMC will be paid for staffing expenses for its personnel through the Allowance for Staffing Expenses.

7.4 Allowance for Program Office

7.4.1 An allowance in the amount set forth in Exhibit A is established for payment for Program Office Fees, as set forth in Exhibit G.

7.5 Reserved

7.6 Requisitions for Payment

7.6.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions will be in the authorized form and will set forth the Services performed by the PMC and the total amount of partial payment requested for the payment period. The total amount of partial payment requested will be broken down into the following categories: (1) Staffing Expenses, (2) Reimbursable Services, (3) Program Office, and, if applicable, (4) Award Fees. The PMC will submit one (1) original and two (2) copies of each requisition for payment. Requisitions must be accompanied by the documentation set forth below.

- (a) Progress Report: The PMC will submit a current report indicating (1) all progress made by the PMC in its Work, (2) the percentage of completion of all Design-Build Work for each Project, and (3) the Services the PMC provided during the payment period.
- (b) Staffing Expenses: For any period for which the PMC is requesting payment for staffing expenses for an Assigned Personnel, the PMC will submit the documentation set forth below:
 - (1) Assigned Personnel's name and title.
 - (2) Commissioner approval of the Assigned Personnel, either approved Staffing Plan or documentation approving the Assigned Personnel as a replacement.
 - (3) Assigned Personnel's direct salary rate determined and approved by the Commissioner and included in the Staffing Plan;
 - (4) Statement of the Multiplier set forth in Exhibit A;
 - (5) Number of hours worked each day by the Assigned Personnel for the week(s) in question. The number of hours per day will be broken down to indicate the number of regular business hours and the number of non-regular business hours. The Multiplier will not apply to any increase in the Assigned Personnel's Direct Salary Rate per hour for authorized Services performed during other than regular business hours.
 - (6) Detailed time sheets completed by the Assigned Personnel for the week(s) in question. Such detailed time sheets will reflect all hours of service and a summary of the activities performed each hour by the Assigned Personnel, including without limitation: (1) actual hours during the employee performed Services for this Project; (2) actual hours during which the employee performed Services for other projects; (3) non-billable hours, as defined above; (4) actual hours, if any, during which the Assigned Personnel spent performing Services for this Project for which the PMC is not entitled to compensation, and (5) non-regular business hours, if any.
 - (7) Copy of the PMC's payroll register for the week(s) in question reflecting the amount actually paid by the PMC to the Assigned Personnel for that week,
 - (8) Applicable only if Services were performed during other than regular business hours: (i) copy of authorization by Commissioner for such Services, and (ii) copy of Commissioner's approval of the PMC's policy regarding payment of a premium for Services performed during other than regular business hours.
- (c) Reimbursable Services: For any period for which the PMC is requesting payment for Reimbursable Services, the PMC will submit the documentation set forth below:

- (1) Description of the Reimbursable Service the PMC was directed to provide.
 - (2) If payment is on a lump sum basis, a report on the progress of the work, indicating the percentage of completion of all required Services.
 - (3) If payment is on a unit price basis, a report indicating the number of completed units.
 - (4) If payment is based on actual cost, receipted bills or any other data required by the Commissioner.
- (d) Program Office: For any period for which the PMC is requesting payment for the Program Office in accordance with Exhibit G, the PMC must submit the documentation set forth below:
- (1) With its requisition for PO Mobilization Fee, the PMC must submit (a) a full and complete copy of the PMC's lease; (b) a copy of the Commissioner's written determination of the estimated fair and reasonable PO Mobilization Fee with the PMC's final detailed estimate for the same; and (c) a copy of all supporting documents prepared or submitted in accordance with Section 4(c) of Exhibit G. The PO Mobilization Fee does not include any costs for demobilization of the Program Office, which costs are deemed included in the Multiplier.
 - (2) With its first requisition for PO Lease Costs, the PMC must submit (a) the Commissioner's written determination that the Program Office is ready for occupancy and meets the requirements set forth in Exhibit G; (b) a statement of the amounts actually paid by the PMC in accordance with its rental agreement; and (c) proof of actual payment. For all requisitions thereafter, the PMC must submit the documents required in parts (b) and (c) of the preceding sentence. The PMC will be reimbursed only for amounts actually paid as PO Lease Costs, which will not be subject to mark-up. All amounts for the PMC's overhead and profit with respect to the Program Office are deemed included in the PO Mobilization Fee, PO Operations Fee, and the Multiplier.
 - (3) With its first requisition for a Monthly PO Operations Fee, the PMC must submit (a) a copy of the Commissioner's written determination of the estimated fair and reasonable Monthly PO Operations Fee with the PMC's final detailed estimate for the same and (b) a copy of all supporting documents prepared or submitted in accordance with Section 4(c) of Exhibit G. For all requisitions thereafter, the PMC must submit a statement of the amounts due as Monthly PO Operations Fees. After the first payment of Monthly PO Operations Fee, the Monthly PO Operations Fee will not be subject to cost substantiation for purposes of payment requisition, except and unless such fee is re-negotiated in accordance with Section 4(e) of Exhibit G.
- (e) Award Fee(s): In the event that an Award Fee program is instituted by the Commissioner in accordance with Article 12, in their sole discretion, for any period for which the PMC is requesting payment of Award Fee(s), the PMC must submit (1) all documents required to be submitted with the PMC's payment requisition by the Award Fee Plan; (2) a statement of Award Fee(s) previously paid and the amounts currently due; (3) a copy of the Commissioner's determination that an Award Fee payment is due and the amount thereof. The PMC will not be required to provide cost substantiation for payment of any amounts due and payable as an Award Fee.

7.6.2 All payments hereunder are contingent upon the PMC's satisfactory performance of the required Services. The Commissioner is authorized to make deductions for any Services performed which he/she determines to be unsatisfactory.

7.6.3 The PMC is responsible to ensure that all requests for payment related to any payment period are billed by the PMC in the same requisition, except as otherwise directed by the Commissioner.

7.6.4 Following the receipt of a satisfactory requisition for payment, the Commissioner will approve a voucher in the amount certified for partial payment, less any and all deductions authorized to be made by the Commissioner under any terms of this Agreement or by law. This voucher will thereupon be filed with the Comptroller, with a copy thereof available to the PMC if requested.

ARTICLE 8 – Authorized Action

8.1 Wherever under this Agreement action is to be taken or approval given by the City, such action or approval may be taken or given only by the Commissioner or such person as may be designated in writing by the Commissioner to act on behalf of the City, for such purpose. The PMC will not act or rely upon any purported direction or approval by any other person on behalf of the City.

8.2 The Commissioner, through their duly authorized representative, the Assistant Commissioner, will, in writing, designate a City employee to review the performance of the PMC and to serve as the Commissioner's Representative with respect to this Agreement. The PMC will be responsible to the Commissioner's Representative.

8.3 From time to time as the Work progresses and as provided for herein, the PMC may submit to the Commissioner a specific request in writing for each item of information or approval required by this Agreement and permitted hereunder. The PMC will include all critical path consultation items and Commissioner approvals in its Program Management Plan and Project Management Plan, as set forth in Exhibit D. These requests must state the latest date upon which the information or approval is actually required by the PMC, and must be submitted sufficiently in advance thereof to allow the Commissioner a reasonable time to act upon such submissions or any necessary re-submissions thereof, taking into consideration that the Commissioner may need to consult with stakeholders or other City agencies.

8.4 Approvals will only be given or deemed given by the Department for those submittals or Work specifically identified in this Agreement as requiring “approval” of the Department. All other requests by the PMC for approval will be deemed requests for consultation or information and all responses to the same will be deemed to be for the PMC’s information only and will not modify the PMC’s obligations or the Department’s rights hereunder.

8.5 Except for items specifically designated for “approval” in in this Agreement, the PMC will be responsible for determining how to address written comments and other input received from the Department during a consultation process concerning reviews, observations and/or inspections, and other submittals. The PMC will provide a timely written response to the Commissioner, or person(s) designated by the Commissioner, regarding its disposition of all comments provided to the PMC. Any issues raised during consultation and written comment by the Department, if not properly addressed by the PMC, could affect PMC Final Acceptance.

8.6 Consultation and written comments or approval by the Department of submittals or activities/actions does not relieve the PMC of the full responsibility for providing all Services in accordance with this Agreement.

8.7 The PMC is solely responsible for scheduling necessary requests for information or approval such that the Work is timely completed. The PMC does not have any right to an extension of time on account of delays due to its failure to submit requests for the required information or for the required approval in accordance with the above requirements.

ARTICLE 9 - Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

ARTICLE I. M/WBE PROGRAM

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

If this Contract is subject to the M/WBE Program established by Section 6-129, the specific requirements of MBE and/or WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the “M/WBE Utilization Plan”), and are detailed below. The Contractor must comply with all applicable MBE and WBE requirements for this Contract. All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein will have the meanings given such terms in Section 6-129. Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

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

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

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

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

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

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

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

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

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

C. THE BIDDER/PROPOSER MUST COMPLETE THE SCHEDULE B INCLUDED HEREIN (SCHEDULE B, PART II). A SCHEDULE B SUBMITTED BY THE BIDDER/PROPOSER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS (SEE SECTION V OF PART II) WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOALS IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE CITY DETERMINES THAT THE BIDDER/PROPOSER HAS SUBMITTED A SCHEDULE B WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE SCHEDULE B ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER/PROPOSER WILL BE NOTIFIED

BY THE AGENCY AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED SCHEDULE B TO THE AGENCY. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID/PROPOSAL IS NON-RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE BIDDER/PROPOSER HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.

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

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

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

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

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

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

(b) To apply for a full or partial waiver of the Participation Goals, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date

and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at zhangj@ddc.nyc.gov or via facsimile at (718) 391-1886. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

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

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

11. Modification of M/WBE Utilization Plan. (a) A Contractor may request a modification of its M/WBE Utilization Plan after award of this Contract. PLEASE NOTE: If this Contract is a public works project subject to GML §101(5) (i.e., a contract valued at or below \$3M for projects in New York City) or if the Contract is subject to a project labor agreement in accordance with Labor Law §222, and the bidder is required to identify at the time of bid submission its intended subcontractors for the Wicks trades (plumbing and gas fitting; steam heating, hot water heating, ventilating and air conditioning (HVAC); and electric wiring), the Contractor may request a Modification of its M/WBE Utilization Plan as part of its bid submission. The Agency may grant a request for Modification of a Contractor's M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Participation Goals. In making such determination, Agency will consider evidence of the following efforts, as applicable, along with any other relevant factors:

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

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

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

12. If this Contract is for an indefinite quantity of construction, standard or professional services or is a requirements type contract and the Contractor has submitted an M/WBE Utilization Plan and has committed to subcontract work to MBEs and/or

WBEs in order to meet the Participation Goals, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that the Agency has determined that such work is not needed.

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

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

PART B: MISCELLANEOUS

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

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

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

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

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

ARTICLE II. ENFORCEMENT

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

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

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

- (a) Entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- (b) Revoking the Contractor's pre-qualification to bid or make proposals for future contracts;
- (c) Making a finding that the Contractor is in default of the Contract;

- (d) Terminating the Contract;
- (e) Declaring the Contractor to be in breach of Contract;
- (f) Withholding payment or reimbursement;
- (g) Determining not to renew the Contract;
- (h) Assessing actual and consequential damages;
- (i) Assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- (j) Exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- (k) Taking any other appropriate remedy.

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

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

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

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

ARTICLE 10 – Confidentiality

11.1 In the course of providing Services hereunder, the PMC may have access to confidential and/or sensitive information, including but not limited access to proprietary information obtained from other entities during procurement of, and performance by, Design-Builders. The PMC will keep such information confidential and restrict access to such information in accordance with the terms of this Article 10 and Section 5.08 of Appendix A.

11.2 The PMC acknowledges the importance of confidentiality of non-public information in safeguarding the competitive process and that disclosure by the PMC, or any of its employees or Subcontractors, could lead to conflicts of interest and failure of the City's timely procurement of design-build services for the Design-Build Program. The PMC will train all PMC personnel performing Services for this Contract, including Subcontractors, to preserve the confidentiality of non-public information furnished to, prepared, assembled or used by the PMC and will renew such training at least once per year during the term of this Contract.

11.3 The PMC agrees to cause its Subcontractors to agree to hold all information confidential and to restrict access to such information. Where necessary or appropriate, or as directed by the Commissioner, the PMC will require its personnel and/or Subcontractors to execute a written non-disclosure agreement and confidentiality agreement in a form acceptable to the City.

11.4 If, at any time during the term of this Contract, the PMC knows or has reason to suspect that confidential information subject to the terms hereof has been the subject of theft or unauthorized disclosure, the PMC will immediately notify the Commissioner and will cooperate with the City in any investigation of the same.

ARTICLE 11 – Liquidated Damages

12.1 Late and/or missed Site visits and/or inspections: The PMC may be subject to liquidated damages in accordance with the terms and conditions of this Article. The PMC may be required to be present on Site during Site visits and/or inspections performed by DDC or Consultants. For every hour the PMC fails to appear at such Site visit and/or inspection, the PMC will be subject to liquidated damages in the amount of \$100 and the PMC will be liable to repay the City for costs charged to the City by Consultants during the PMC’s absence. For every missed Site visit and/or inspection, the PMC will be subject to liquidated damages in the amount of \$500 and the PMC will be liable to repay the City for all costs charged to the City by Consultants for the missed Site visit and/or inspection. The PMC is responsible for notifying Consultants of cancellations or changes in the scheduled Site visit and/or inspection. Cancellation or rescheduling of a Site visit or inspection on less than 24 hours’ notice or failure to notify Consultants of a cancellation or rescheduling of a Site visit and/or inspection will be treated as a missed Site visit and/or inspection.

12.2 The amount of liquidated damages set forth herein, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in commencing the work, will be fixed and agreed as liquidated damages that the City will suffer by reason of such delay, and not as a penalty. Such liquidated damages will be in addition to any liquidated damages assessed pursuant to Appendix A for PMC’s failure to report Subcontractors in the City’s Payee Information Portal.

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

ARTICLE 12 – Award Fee

13.1 General. The Commissioner reserves the right to unilaterally establish an Award Fee Program and an Allowance for Award Fees at any time during the term of this Agreement. No such program will be established unless and until the Agency issues both an Award Fee Plan and establishes an Award Fee Review Board (“AFRB”). The City makes no representations or guarantees that an Award Fee Program will be established or that, if such program is established, the PMC will receive any payment from the Allowance for Award Fee. The PMC acknowledges and represents that neither its proposal, nor its Agreement, was made with the understanding that an Award Fee Program would be established or that the PMC would receive Award Fee payments. If an Award Fee Program is established, such program is subject to the terms and conditions set forth below and in the Commissioner’s Award Fee Plan.

13.2 Award Fee Plan. If an Award Fee Program is to be established, the Commissioner will establish an Award Fee Plan, which will set forth the protocol for administering the Award Fee Program and evaluation criteria. The evaluation periods and the associated award fee pool amounts will also be set forth in the Award Fee Plan. The protocol and terms and conditions of any Award Fee Program established will be entirely within the Commissioner’s discretion and may be established without input or further agreement from the PMC. No request by the City for comment or input on the Award Fee Plan by the PMC will act as a waiver of the City’s rights hereunder.

13.3 In evaluating the PMC’s performance in accordance with the Award Fee Plan, the Commissioner or the AFRB may solicit and utilize feedback from any person or entity that the Commissioner and/or AFRB deem appropriate, including Program participants, Consultants, Design-Builders, City staff or end-users of any PMC deliverable or Project.

13.4 Amounts payable to the PMC as Award Fees will be deemed to be for the PMC’s profit and will not be subject to substantiation of cost.

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

THE CITY OF NEW YORK

By: _____
Deputy Commissioner

PROGRAM MANAGEMENT CONSULTANT:

By: _____

Print Name: _____

Title: _____

EIN: _____

Approved as to Form and Certified
as to Legal Authority

Acting Corporation Counsel

Date: _____

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of _____ County of _____ ss:

On this ____ day of _____, _____ before me personally came _____, who being by me duly sworn, did depose and say that he/she resides in the City of _____, that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument by order of the directors of said corporation as the duly authorized and binding act thereof.

Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of _____ County of _____ ss:

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

Notary Public or Commissioner of Deeds

EXHIBIT A: CONTRACT INFORMATION/SCHEDULE A

- **Project:** Program and Project Management Services for the New York City Borough Based Jail Program

- **Subconsultant(s):** If any, to be inserted after selection of the Design-Build Program Management Consultant

- **Total Not to Exceed Amount:** \$ _____
(Total of the Allowances listed below)
 - Allowance for Staffing Expenses: \$ _____

 - Allowance for Reimbursable Services: \$ _____

 - Allowance for Program Office: \$ 8,635,000

- **Multiplier for Overhead and Profit:** _____

- **Term of Contract:** The Contract will commence as of the date set forth in the Notice to Proceed and will remain in effect until DB Final Acceptance of all required Design-Build Work for all Projects and completion of all required Services hereunder. Approximate time frame for DB Final Acceptance for all currently anticipated Projects and completion of all required PMC Work is 3650 consecutive calendar days.

- **Insurance Requirements:** The amounts of such insurance, subject to Article 7 of Appendix A, are set forth below in Schedule A. General Provisions governing the Contract, including insurance coverage the PMC and its subconsultants are required to provide, are set forth in Appendix A, which is included as an Exhibit to the Contract.

EXHIBIT A, CONTINUED: SCHEDULE A

General Provisions, Appendix A-Article 7¹ -- Insurance	
Types of Insurance (per Article 7 in its entirety, including listed paragraph)	Minimum Limits and Special Conditions
<p>■ Workers' Compensation §7.02</p> <p>■ Disability Benefits Insurance §7.02</p> <p>■ Employers' Liability §7.02</p>	<p>Statutory amounts.</p>
<p>■ Commercial General Liability §7.03(A)</p>	<p><u>\$3,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal & advertising injury (unless waived in writing by the Department)</p> <p><u>\$6,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds:</p> <ol style="list-style-type: none"> 1. City of New York, including its officials and employees, and 2. _____ 3. _____
<p>Commercial Auto Liability §7.03(B)</p> <p>If vehicles are used in the provision of Services under this Agreement, then the PMC will maintain Commercial Automobile Liability insurance in the amount specified.</p>	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the PMC will provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90</p>
<p>Professional Liability/Errors & Omissions §7.03(C)</p> <p>For all professional Services provided by the PMC pursuant</p>	<p><u>\$5,000,000.00</u> per claim</p>

¹ All article or section references in Schedule A are to Appendix A unless otherwise specified.

<p>to this Agreement, PMC will maintain, or cause each Subconsultant providing professional Services to maintain, professional liability insurance or errors and omissions insurance appropriate to the type(s) of such Services to be provided under this Agreement in the amount specified.</p>	
<p><input type="checkbox"/> Crime Insurance §7.03(D)</p>	<p>\$ _____ Employee Theft/Dishonesty \$ _____ Computer Fraud \$ _____ Funds Transfer Fraud \$ _____ Client Coverage \$ _____ Forgery or Alteration \$ _____ Inside the Premises (theft of money and securities) \$ _____ Inside the Premises (robbery or safe burglary of other property) \$ _____ Outside the Premises \$ _____ Money Orders and Counterfeit Money</p> <p>City of New York is a loss payee as its interests may appear</p>
<p><input type="checkbox"/> Cyber Liability Insurance §7.03(E)</p>	<p><i>Reserved</i></p>
<p><input type="checkbox"/> [OTHER]</p>	
<p><input type="checkbox"/> [OTHER]</p>	
<p>Section 10.07 – Liquidated Damages</p>	
<ul style="list-style-type: none"> Violation of Section 3.02(H), reporting subcontractors in the City’s Payee Information Portal 	<p>\$100 per day</p> <p>\$100/hour or \$500/Missed Visit/Inspection</p>

<ul style="list-style-type: none"> • Violation of Contract Article 11, Late or Missed Site Visits/Inspections 	
Section 14.04 – Notice	
Department’s Mailing Address for Notices	Agency Head 30-30 Thomson Avenue Long Island City, Queens 11101
PMC’s Mailing Address and Email Address for Notices	

EXHIBIT B: STAFFING PLAN

STAFFING PLAN: The PMC's preliminary Staffing Plan is set forth on the following pages. Such Staffing Plan was submitted by the PMC as part of its Proposal for the Contract. As set forth in Article 5, the final Staffing Plan is subject to review and approval by the Commissioner.

EXHIBIT C: PROGRAM OBJECTIVES

The New York City Borough Based Jail Program (the “Program”) has been established to oversee, supervise and coordinate design and construction of at least four (4) new state of the art correctional facilities in New York City as part of an initiative to close the Rikers Island Jail Complex. The new facilities will be borough-based, rather than centralized on Rikers Island, and will house approximately 1500+ inmates each. Additional correctional facility design-build projects may be planned at a future date and made part of the Design-Build Program, in accordance with applicable law.

The City seeks to close Rikers Island jail facilities in less than ten (10) years. The City’s ultimate goal is to create a jail system that is smaller, safer and fairer and to ensure that the City’s jails are humane productive places for those who work or are incarcerated there now and in the future. These new correctional facilities will be focused on providing essential services while facilitating programs and services that aid those incarcerated in finding a better path in life and improving access to community supports.

In furtherance of these goals, New York State passed the New York City Rikers Island Jail Complex Replacement Act (the “Act”), providing the City with authority to procure and enter into design-build contracts for the design and construction of new correctional facilities. A copy of the Act was included with the Request for Proposals (“RFP”). This authorization presents DDC with a unique opportunity to adopt best practices and to establish new processes and procedures for its New York City Borough Based Jail Program.

Time is of the essence. The Act expires in April 2020 and requires that all Requests for Qualifications be issued prior to expiration. Due to the critical nature of the Program and the short duration of DDC’s authorization, the PMC will be required to complete key tasks set forth in Sections (A) and (B) of Exhibit D quickly and efficiently to avoid jeopardizing DDC’s ability to procure design-build contracts for at least the four (4) projects referenced above.

The Design-Build Program Management Consultant (“PMC”) will be responsible for furnishing of all labor, materials, and equipment together with all work incidental thereto necessary or required to establish and execute a cost effective and efficient Program. The Services of the PMC under this Agreement will generally consist of providing expert professional program and project management, and related support Services, for the Design-Build Program during its planning and design and construction phases, inclusive of project closeout. The program management support Services will include but are not limited to: program and project management; management of multi-disciplined professional and technical staff; procurement management; owner’s representation Services; document management and reporting; program and project level scheduling and resource allocation analysis, program status and progress monitoring, budgeting, cost analyses and project controls.

The design and construction of borough-based jails in New York City is an extremely complex undertaking requiring experienced and creative professionals skilled in a variety of disciplines. DDC anticipates that at least four (4) mega design-build projects, with a total value in excess of \$4 Billion, will be active simultaneously and the PMC will be required to bring all necessary resources to bear in facilitating these projects.

DDC recognizes that design-build is fundamentally different from the design-bid-build system that DDC utilizes in other programs. The design-build project delivery system requires a different method of procuring and managing design and construction services and a new way of doing business for DDC. DDC anticipates deviating from current policies and procedures in key areas to better meet the unique needs and challenges of design-build projects, including but not limited to alternative policies and procedures for payment requisitions, change orders, and dispute resolution. The project management Services hereunder are for project management of design-build contracts, not general construction contracts in a design-bid-build universe, and the Program and Project Management Plans and Program manual(s) created by the PMC must reflect that distinction. The PMC will be DDC’s facilitator in all aspects.

Without limitation, the PMC will immediately be tasked with quickly developing a design-build program for DDC that complies with the Act, reflects industry best practices, and distinguishes the Design-Build Program from “business as usual”, while maintaining the highest standards of fiscal responsibility and quality assurance in all aspects of the Design-Build Program.

The PMC's Program and Project Management Plans must establish systems for coordinating and managing multiple design-build projects simultaneously. The PMC's processes and systems should be user friendly and accessible to City personnel and other authorized City vendors providing design and construction related services for the Design-Build Program, including Design-Builders. Policies and procedures developed by the PMC, and technologies selected by the PMC to implement such policies and procedures, should be designed, or selected, with user experience in mind and should not burden City personnel or other vendors with unnecessary steps or confusing or incomplete direction.

The PMC has been hired to provide its expertise in program and project management services in developing and managing the Design-Build Program and each Project. If services, equipment, software, or other labor and/or materials are necessary for the efficient and cost-effective operation of the Design-Build Program, any project hereunder, or otherwise to meet the Design-Build Program Objectives, the PMC is responsible to notify DDC and must provide such services, equipment, software, or other labor and/or materials upon the request of the Commissioner.

In furtherance of the Design-Build Program Objectives, with the PMC's assistance whenever requested, DDC will work with other City agencies, entities, and officials and State entities, where appropriate, to enhance or expedite such approvals and processes necessary for projects to advance. DDC makes no guarantee that any such enhancements will be implemented or acceleration executed. The PMC will be expected to identify reasonable opportunities for improvements to any approval process and to provide detailed analyses and roadmaps for successfully implementing such improvements without compromising the purpose of such approvals.

Finally, in aid of the Design-Build Program Objectives, at any time during the Design-Build Program DDC may implement various incentive and/or reward programs for the PMC and/or Design-Builders to facilitate completion of any Project or all Projects, in the Commissioner's discretion. This may include the implementation of programs for award fees and payments for early completion or acceleration. If any such program is implemented, DDC encourages the PMC (and Design-Builder(s)) to share incentive and reward payments, if any, with its team members that are responsible for the day-to-day performance of the Work.

EXHIBIT D: SCOPE OF SERVICES

I. Design-Build Program Implementation

1. General. The PMC will develop and implement a Design-Build Program customized to meet the Design-Build Program Objectives and the requirements set forth herein.
 - a. The Program and Project management Services will consist of all the duties and obligations set forth in Article 6 and this Exhibit, which encompasses, without limitation (a) assisting the City in performing all of its duties and obligations set forth in the final Design-Build Contracts, (b) assisting the City in performing all of its duties and obligations that are necessary to comply with statutory or environmental requirements, (c) other design work as directed by the Commissioner, (d) assisting and coordinating with the City to procure qualified Design-Builders as authorized by Law, (e) facilitation, inspection and management of design and construction activities performed by Design-Builders as necessary to safely and timely complete the Projects.
 - b. Personnel requirements will vary during the term of this Agreement and resources needs will be reevaluated by the parties on an as-needed basis, but no less than quarterly.
 - c. The PMC will provide a Program Manager in accordance with Article 5 to be dedicated exclusively to manage the Design-Build Program. The Design-Build Program Manager will be responsible for day-to-day management of all members, whether employees or Subcontractors, of the PMC's team, and will be the direct liaison between the City and the PMC.
 - d. The PMC will establish an organizational structure of all PMC Key Personnel and other staff or Subcontractors involved in the management and execution of the Design-Build Program, and will detail how Program/Project-related information will be communicated to various stakeholders. A key task of the PMC in implementing the Design-Build Program will be to review current Program documents and to refine the goals and objectives of the overall Program and individual Projects. The PMC should also delineate clear decision-making, risk management, claims management, issue resolution procedures and coordinated dissemination of information related to this effort.
 - e. DDC's authorization to procure Design-Build Contracts under the Act expires in April 2020. All Requests for Qualifications ("RFQs") solicitation documents for Design-Build Contracts must be issued no later than April 1, 2020. The PMC will provide such Services and deliverables necessary for DDC to issue complete RFQs that conform with the Act in all respects for each Project by April 1, 2020.
 - f. Nothing set forth herein is intended, or will be deemed, to constitute a comprehensive listing of all Services that will be performed by the PMC under this Agreement. The Services will generally include those set forth herein, which will be performed as directed by the Commissioner. The PMC will function as an extension of DDC's program management staff in all functions as directed by the Commissioner.
2. The Design-Build Program Implementation tasks to be performed by the PMC will include, without limitation, the tasks set forth below:
 - a. Document Review.
 - i. Review studies and reports previously completed for and in support of the Design-Build Program and provide a draft summary of findings, such as adequacy of work completed and changes since date of report delivery. Meet with DDC staff and others as required to discuss findings and resubmit findings as final.
 - ii. Refine the Design-Build Program Objectives and a statement of Project objectives for each Project.
 - b. Program Management and the Project Management Plan

- i. The PMC will establish a Program Management Plan and, for each Project, a Project Management Plan (“PMP”). The PMP should align with best management practices of the Design Build Institute of America (“DBIA”) and the Project Management Institute (“PMI”) and their Project Management Body of Knowledge. The PMP will be the primary source of information for how each design-build Project will be planned, executed, monitored, controlled, and closed out.
- ii. In accordance with industry standards, the PMP must include, without limitation, plans for the following:
 1. Document Control System
 2. Scope Management
 3. Schedule Management
 4. Cost Management
 5. Requirements Management
 6. Quality Management
 7. Risk Management
 8. Safety Management
 9. Communications Management (Internal & External)
 10. Stakeholder Management
 11. Compliance Management
 12. Change Management
 13. Procurement Management
 14. Project Fraud Prevention
 15. Collaboration and Teamwork
- iii. Develop the Design-Build Program scope, schedule, and budget for various stages and related contracting strategies.
- iv. Develop work breakdown structures to prepare and monitor the Design-Build Program budget, performance and schedules. Develop and maintain a Program-level master plan document and master schedule to integrate all program activities, incorporate input from individual, detailed design and construction schedules for each program component, and provide roll-ups into a summary schedule. Monitor design and construction progress adopted program schedules. Identify when remedial steps may be necessary to ensure program schedules adherence.
- v. Submit and maintain a Program schedule for performance of the Services stipulated herein. The PMC’s schedule will identify all required meetings and deliverables and allow for incorporation of DDC comments, as required. The Design-Build Program Schedule must contain a minimum of the following elements:
 1. All planning, preliminary and final design activities and construction phase activities
 2. All pre-design-build procurement deliverables required under this Agreement
 3. Agency coordination:
 - a. All DDC Units, as appropriate
 - b. External Stakeholders

- i. New York City Department of Corrections (“DOC”)
 - ii. Mayor’s Office of Criminal Justice (“MOCJ”)
 - iii. New York City Board of Correction
 - iv. New York State Commission on Corrections (“SCOC”)
 - vi. Prepare, update, and maintain an overall program and project implementation plan reflecting specific project design and construction parameters, consistent with SEQRA, CEQR and environmental review documents and approvals, environmental performance commitments, legal agreements, applicable Law, and other project requirements as these are developed.
 - vii. The PMC will be required to co-locate its personnel as directed by the Commissioner in accordance with Exhibit G.
 - viii. Exit Strategy and Transfer Assistance Services.
 - 1. The PMC will establish an Exit Strategy Plan for the transfer of program and project management Services for the Design-Build Program from the PMC to DDC or another vendor.
 - 2. The PMC will provide transfer assistance Services to allow the Services provided by the PMC under this Agreement to continue without interruption or adverse effect and to facilitate the orderly transfer of Services to the City or its designee upon the expiration or termination of this Agreement.
 - ix. The PMC is encouraged to implement and/or recommend the use of innovative technologies, such as blockchain, to improve project management and quality control functions.
- c. Design-Build Manual.
 - i. The PMC will create a Design-Build Manual for the Design-Build Program incorporating all policies, procedures, and standard forms and documents for the Design-Build Program’s use.
 - ii. The Manual must capture industry (e.g., PMI, DBIA) best practices to meet the Design-Build Program Objectives and other requirements hereunder.
 - iii. The Manual must outline the roles and responsibilities of each party and/or title and describe the guidelines/procedures required for each Project from project development to final contract documents, through the contract procurement phase, execution of design and construction phase, and through final contract closeout for each Project, including but not limited to communications, payment requisitions, change orders, claims and protocols for review of all deliverables requiring review or approval. At a minimum, the Manual must address the following:
 - 1. Use and purpose of the Manual;
 - 2. Design-Build Contract procurement strategy and process;
 - 3. Environmental documentation and design-build preliminary engineering;
 - 4. Design-Build procurement protocols and forms;
 - 5. Design-Build Contract Documents; and
 - 6. Design-Build project execution (project roles, preliminary activities, oversight and management, design management, construction management, change management, claims management, payment management, value engineering, project completion, commissioning, closeout and post-completion).

- iv. The Manual must contain all appropriate diagrams to illustrate each process and instructions for use of Design-Build Program forms.
 - v. All versions of the Manual must be delivered in Word and portable document format, appropriately labeled to avoid confusion and must include appropriate pagination, headings and bookmarks to permit easy navigation within the document.
- d. Design-Build BIM Guidelines for the Design-Build Program. The PMC will prepare Design-Build BIM Guidelines that incorporate industry best practices for use on the Design-Build Program. The BIM Guidelines will become part of the Design-Build Program requirements. All versions of the Design-Build BIM Guidelines must be delivered in Word and portable document format, appropriately labeled to avoid confusion and must include appropriate pagination, headings and bookmarks to permit easy navigation within the document. The PMC will be provided a copy of DDC's existing BIM Guidelines for reference.
- e. Initial Schedule and Submissions
- i. Anticipated Program Schedule
 - 1. Staffing Plan (Article 5) – within five (5) Days of NTP
 - 2. Summary of Findings (I(2)(a)(i)) – completed within thirty (30) Days of NTP
 - 3. Program Schedule (I(2)(b)(v)) – preliminary, post-summary of findings within forty (40) Days of NTP (must include preliminary PMC deliverables schedule)
 - 4. Program Management Plan (I(b)(2)(i)) – completed within sixty (60) Days of NTP
 - 5. Form of Project Management Plan (I(b)(2)(i)) – form of PMP to be used for Project-specific PMPs, completed within sixty (60) Days of NTP
 - 6. Design-Build Manual (I(2)(c)) – complete working draft within ninety (90) Days
 - 7. Program Office (Exhibit G) – fully operational within 120 Days of NTP
 - 8. Program Schedule (I(2)(b)(iv-v)) – Final, pre-design-build procurement within 120 Days of NTP
 - 9. Total Program Cost and Forecast (III(5)) – completed within 120 Days of NTP
 - 10. Project-specific PMPs (I(b)(2)(i)) – completed within 120 Days
 - 11. Design-Build Manual (I(2)(c)) – final and approved within 150 Days of NTP
 - 12. Project Management Information System (III(8)) – fully operational and approved within 150 Days of NTP
 - ii. The following Services and/or deliverables are anticipated to be required within three (3) months of NTP:
 - 1. Initiation of a Document Control System
 - 2. Preparation of Procurement and Evaluation Plans for Design-Build procurements
 - 3. Preparation of qualifying criteria for Design-Builder(s) on one (1) or more Projects for inclusion in requests for qualifications (“RFQs”) for Design-Build services

4. Outreach coordination and management for public meetings and information sessions for one (1) or more Projects, including but not limited to pre-solicitation conferences
 5. Identification of needs to complete requests for proposal (“RFP”) documents for Design-Builder services on one (1) or more Projects and a schedule for submission of deliverables for the same
 6. Submission of draft Design-Build BIM Guidelines
 7. Submission of draft Program Safety Guidelines
- iii. The following Services and/or deliverables are anticipated to be required within six (6) months of NTP:
1. Integration of the Program Office and PMIS with DDC systems
 2. Submission of the final, approved Design-Build BIM Guidelines
 3. Outreach coordination and management for public meetings and information sessions for one (1) or more Projects, including but not limited to pre-solicitation conferences
 4. Integration of all existing materials and information and submission of all documents necessary to assemble a detailed RFPs for Design-Build services for one (1) or more Projects
 5. Preparation of qualifying criteria for Design-Builder(s) for all Projects for inclusion in requests for qualifications for Design-Build services
 6. Submission of the final, approved Exit Strategy Plan
- iv. The following Services and/or deliverables are anticipated to be required within one (1) year of NTP:
1. Integration of all existing materials and information and submission of all documents necessary to assemble a detailed RFPs for Design-Build services for at least four (4) Projects
 2. Issuance of RFQs for at least four (4) Projects
 3. Issuance of RFPs for at least two (2) Projects
 4. Multiple industry outreach sessions for at least four (4) Projects

II. Architectural, Engineering, Procurement and Related Services

1. General
 - a. The PMC, through its duly licensed and qualified personnel or Subcontractors, will provide such architectural, engineering, and other professional Services necessary to coordinate and manage the successful completion of all Projects, which Services will include, but not be limited to, the tasks set forth herein. All Services requiring a license or authorization in New York State will be performed by persons or entities with the appropriate New York State license or authorization.
 - b. The PMC will act as the agency’s representative and advocate in all aspects of the Design-Build Program.
 - c. Coordinate, prepare materials, including presentations, and participate in meetings with Design-Build Program stakeholders and interested public entities, including but not limited to meeting minutes.
2. Pre-Procurement and Procurement Phases
 - a. Develop and manage procurement schedule: Prepare and update as appropriate a procurement schedule identifying key activities, and milestones for the procurement of

each Project, including delivery of RFP documents by the PMC. At a minimum, the schedule must include interfaces, hold points, precedents and key gateways or decision points, and will be compatible for integration into a master schedule in Primavera EPPM (latest version). The PMC will utilize the latest version of all contract management, estimating, and scheduling software unless otherwise directed by the Commissioner.

- b. Develop procurement strategy and prepare Procurement Plan and Evaluation Plans for all procurements, including procedures and protocols for handling of confidential proposer generated materials and information. Protocols, the procurement plan, and evaluation plans will be integrated into the Manual. If directed, the PMC's Procurement Plan and Evaluation Plans, and all attendant protocols prepared by the PMC, will provide for blind reviews of proposals.
- c. Develop and manage an industry outreach program. Develop marketing strategies as required to assess interest of industry and identify potential proposers and prepare a report documenting said strategy. This will include working closely with DDC staff and others as approved by the Commissioner, in preparation of, an industry forum and stakeholder outreach. Deliverables may include: a list of potential proposers; presentation material for industry forum, and report on market interest and market feedback studies.
- d. Working with DDC staff establish a project data management system as required to provide sensitive solicitation documents securely to potential proposers.
- e. Prepare evaluation factors, evaluation criteria, all requirements, Program and Project Objectives, scope, performance and, only where applicable, prescriptive specifications, and all technical requirements necessary to complete the Request for Qualifications ("RFQ" or "RFQs") and Request for Proposals ("RFP" or "RFPs") for all Projects, including, but not limited to, experience requirements for all Design-Builders and their personnel and subconsultants, insurance and bonding requirements, and financial strength.
 - i. PMC's evaluation factors must include, without limitation, those factors required by the Act and include "Pass/Fail" evaluations factors with clear, verifiable requirements.
- f. Prepare scope and technical requirements to be included in design-build contract documents, including but not limited to scopes of work, project program, specifications (performance and prescriptive), performance measure benchmarks and performance penalties/deductions, project utility resource documents, sample design and construction phasing, facility standards, general and special requirements, and preliminary schedules. The PMC may also be directed to prepare schematic drawings for any Project.
- g. Review draft Design-Build Contract Documents for conformity with the PMP, Manual, scope, and technical requirements. Note: This is not a legal review. The purpose of this review is to ensure the Design-Build Contract Documents accurately reflect the Program requirements and procedures for the Project.
- h. Perform final review of draft RFQs and RFPs for compliance with stated Project, clarity and completeness, and provide comments and recommendations on the same.
- i. Review and comment on alternative technical concept ("ATC") submittals and assist with industry review and one-on-one meetings with potential vendors and short-listed firms. Provide analysis on ATCs as directed.

- j. Review submitted Statements of Qualifications (“SOQ” or “SOQs”) and proposals for compliance with “Pass/Fail” RFQ and RFP requirements, as applicable, and prepare a concise summary, in standard form, of each proposers’ compliance (or non-compliance) with such requirements.
 - k. Track and prepare responses to Requests for Information (“RFI” or “RFIs”) and addenda and provide other support Services as needed at all stages of procurement, including, but not limited to coordination and meeting minutes or transcription Services for all meetings, one-on-one reviews, or events with potential proposers and/or short-listed firms.
 - l. Review submitted proposals for compliance with the RFP.
 - m. Provide technical advisory Services, as needed, to the SOQ and proposal evaluation committees in strict compliance with the Evaluation Plan, which Services may include but are not limited to review and comment by the PMC’s Insurance Advisor on each proposer’s insurance and bonding proposals and the value of proposed contractor controlled insurance programs, if any.
 - n. Provide Stakeholder management and support Services at all stages of procurement, as needed.
 - o. Provide coordination and other assistance to DDC’s ACCO during SOQ and proposal evaluation phase to ensure strict compliance with the Evaluation Plan for each procurement.
 - p. Provide assistance to DDC as needed during the negotiation phase, including but not limited to cost estimating and evaluation Services, design and constructability reviews to ensure compliance with all specifications (prescriptive and performance).
3. Design, Design Management and Design QA
- a. The PMC will provide a Design Manager dedicated exclusively to the Design-Build Program to manage all design services and personnel. The Design Manager is identified in Exhibit B. The Design Manager will act as the City’s top representative in all aspects of design for each Project. The PMC’s responsibilities will include, without limitation, the tasks set forth below.
 - b. The PMC, through its duly licensed personnel and Subcontractors, will perform all site investigations and compliance reviews necessary to prepare all technical and design documents for procurement of Design-Build Contracts for each Project, including but not limited to Project specifications in accordance with Project requirements and design guidelines. The PMC may also be required to refine or complete Program-wide design guidelines for the Design-Build Program prepared by other Consultants or to create Program-wide design guidelines using its own personnel or Subcontractors.
 - c. Throughout the Design-Build Program, the PMC will manage all aspects of the design process for the City, including but not limited to coordinating all Stakeholders during Project development, providing design and design management Services during procurement of Design-Build Contracts for each Projects, and design reviews and quality assurance during each Project’s execution.
 - d. Identifying long-lead items.
 - e. Identify critical path items within the long lead times and ensure that Design-Builders are acting appropriately to meet Project deadlines.
 - f. Conduct strict and detailed audits of each Project.

- g. Provide design reviews, including reviews of ATCs, and proposals and prepare analysis and presentations to convey findings to DDC and stakeholders.
- h. Value Engineering Workshop and Unsuccessful Proposal Review. Within forty-five (45) Days of a notice to proceed being issued to a Design-Builder for any Project, the PMC will coordinate and schedule, concurrently or separately, a Value Engineering Workshop and an Unsuccessful Proposal Review with the Design-Builder for the Project, the DDC project team, the PMC's Project team, and PMC's Design Manager and key design personnel for the applicable Project.
 - i. The purpose of the Value Engineering Workshop is to allow the Design-Builder for the Project to present potential Value Engineering Change Proposals ("VECP" or "VECPs") for the Commissioner's consideration early in the Project to provide the greatest opportunity for cost savings for the Project with the least disruption to ongoing Work. The PMC will coordinate with the Design-Builder to distribute appropriate agendas and presentation materials.
 - ii. The purpose of the Unsuccessful Proposal Review is to identify and discuss the advisability and feasibility of incorporating into the Project any worthwhile design concepts, construction means and methods and other ideas owned by the City contained in unsuccessful proposals submitted to DDC. Only design concepts and other ideas owned by the City in accordance with the design-build proposal documents may be utilized and the PMC will ensure that proprietary and trademarked concepts and materials, including any materials identified as sensitive or confidential, submitted by unsuccessful proposers are removed from proposals to prevent confusion. At least seven (7) Days prior to the scheduled Unsuccessful Proposal Review, the PMC will distribute to scheduled attendees a list of potential concepts to be discussed.
- i. Provide all quality assurance and control Services necessary to ensure all design deliverables from Design-Builders conform to the contract requirements of each Design-Build Contract.
- j. Prepare reports and analysis on Project status.
- k. Review change order requests for compliance with Design-Build Contract requirements and cost and schedule impacts. Process change order requests in accordance with PMP and Design-Build Contract(s).
- l. Provide review and analysis of VECP requests and make a report and recommendation to the Commissioner as to acceptance and approval of such requests. Process such VECP if approved.
- m. Work collaboratively with multiple Project teams to ensure that each Project is timely completed in accordance with contract documents and Program requirements.
- n. Assist with design charrettes and value engineering workshops
- o. Manage stakeholder involvement in the design process.
- p. Drive progress in all aspects of Project design activities.
- q. Disseminate Program design scope and/or policy changes to stakeholders and Design-Builders, as needed.
- r. Facilitate and support all regulatory approvals and permit applications.
- s. Monitor the issuance and review of shop drawings, product data and other submittals.

- t. Assist in resolution of Design-Builder contractual and technical issues focused on contractual compliance and auditing of the Design-Builder quality plans and procedures.
- u. Manage and resolve technical project and Design-Builder contract issues.
- v. Establish and manage a technical issue escalation process.
- w. Prepare, implement and update a Technical Management Plan to include all processes and procedures to manage contract requirements, compliance and to demonstrate progress and schedule targets.
- x. Provide reports with respect to design documents at various stages of the design process, as directed by the Commissioner.
- y. Review of Design Documents: At all phases of design, the PMC will review and provide written comments with respect to Design Documents for each Project prepared by the Design-Builder(s). The PMC's review will include, but not be limited to, the issues set forth below.
 - i. Constructability and Value Engineering;
 - ii. Coordination, including elimination of conflicts and/or overlaps (utilizing BIM clash detection);
 - iii. Economy and efficiency;
 - iv. Construction methods and materials;
 - v. Availability of materials and labor;
 - vi. Minimalization of impact on agency operations;
 - vii. Time of performance and Project Schedule;
 - viii. Compliance with the required scope of Design-Build Work;
 - ix. Compliance with PMC and DDC comments;
 - x. Avoidance of possible conflicts and overlapping jurisdiction among the Subcontractors performing Design-Build Work for any Project, including proposed and recommended solutions for the elimination of such conflicts or overlaps, at least one of which proposed solutions will utilize BIM scope delineation, and
 - xi. Avoidance of inconsistencies, problems, delays and change orders during the construction process;
 - xii. Identify risk registers associated with each Project, and risk analysis, and risk assessment register log.
 - xiii. In addition to and without limiting the foregoing, the PMC will, as part of its review of the design documents, (1) identify any issues that may generate problems during Project execution; (2) make recommendations for any changes in the Design-Build Work it considers necessary or desirable, and (3) make any observations or raise any concerns it may have concerning the design or the structural integrity of the same. Notwithstanding anything to the contrary contained in this Agreement, the PMC will not be responsible for professional errors or omissions in Design Documents prepared by the Design-Builder(s).
- z. Facilitate timely and complete submissions to the New York State Commission on Corrections for approval in accordance with the Act. Coordinate such activities and meetings necessary to facilitate such submissions and timely review and approval of the same.

- aa. Take appropriate action to ensure that all required filings with regulatory agencies with respect to each Project have been made in timely manner.
 - bb. The PMC will distribute the Design Documents to the Commissioner, appropriate Stakeholders as directed, regulatory agencies and any other entities or individuals involved with the applicable Project in a timely manner for their review and will collect and track all comments received, including but not limited to comments from the Commissioner, and their resolution. The PMC will ensure that all comments are resolved in a timely manner and will notify the Commissioner in the event that comments are not being addressed within a reasonable period by the responsible party.
4. Building Information Modeling (BIM) Services
- a. Throughout the project, the PMC will provide oversight to ensure that BIM services and/or uses are properly implemented by all Design-Builders and their subcontractors. BIM services and/or uses include, without limitation, the following: clash detection, cost estimation, scope delineation, construction system design, phase planning, digital fabrication, record modeling (3D&4D), and asset management. The PMC will review the Project BIM Execution Plan submitted by the Design-Builder(s) for each Project for compliance with the Design-Build BIM Guidelines prepared by the PMC, and will ensure that the Design-Builder(s) and their subcontractors comply with the approved BIM Execution Plan.
5. Construction Management and Construction QA/QC
- a. General. The Services to be provided by the PMC during construction will include without limitation the Services set forth below, as directed in writing by the Commissioner.
 - b. Prior to the commencement of construction for Design-Build Work, verify that the Design-Builder(s) have obtained all necessary permits, certificates, licenses or approvals, required for the performance of the Design-Build Work by the New York City Building Code, the Electrical Code or any other applicable law, rule or regulation of any government entity, including, but not limited to approvals required by any governing or community boards. Ensure that no construction for Design-Build Work proceeds in the absence of such necessary permits, certificates, licenses or approvals.
 - c. At a minimum, the PMC will maintain and update the PMP as needed and submit such updated and revised PMP to the Commissioner for approval.
 - d. Undertake the following responsibilities with respect to submittals and approvals:
 - i. Implement procedures to be followed by the Design-Builder(s) for the expeditious processing of submittals, including without limitation shop drawings, material samples and catalogue cuts. Such procedures will be in accordance with the PMP and Manual. Such procedures will require the Design-Builders to submit shop drawings in hard copy, as well as in digital form (i.e., in the form of BIMs).
 - ii. Make recommendations to the Commissioner regarding the approval of subcontractors and material vendors submitted by Design-Builders for the Commissioner's approval.
 - e. Undertake the following responsibilities with respect to the inspection of the Design-Build Work:
 - i. Provide technical inspection, supervision and coordination of Design-Build Work on each Project until DB Final Acceptance of the Design-Build Work by the Commissioner, verifying that the materials furnished and Design-Build Work performed are in accordance with all requirements of the Design-Build Contract

- Documents, and that Design-Build Work on the Project is progressing on schedule.
- ii. Provide offsite plant inspection of fabricated and/or raw materials to be used on each Project, as directed by the Commissioner, to insure conformance with the material specifications of the Design-Build Contract Documents.
 - iii. Take appropriate action to prevent the installation of Design-Build Work, or the furnishing of material or equipment, which has not been properly approved or otherwise fails to conform to the Design-Build Contract Documents, and inform Commissioner promptly of such action and the reasons for and outcome of such action.
 - iv. Perform all appropriate inspections, quality control tests, or any other tests required by law, rule or regulation or by the Design-Build Contract Documents, to ensure that such tests are performed in a satisfactory and timely fashion. Such tests will include without limitation, semi controlled or off-site inspections and special inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel or any other material or equipment and associated assemblies. If directed by the Commissioner in writing as a reimbursable service, the PMC will retain the services of a qualified laboratory to provide any required testing. Compensation for such laboratory Services will be made to the PMC under the Allowance for Reimbursable Services in accordance with the terms thereof.
 - v. Inspect each Project on a weekly basis prior to Substantial Completion of the Design-Build Work, occupancy by the City, or DB Final Acceptance.
- f. Review and evaluate the means and methods of construction proposed by the Design-Builders and advise the Commissioner in the event the PMC reasonably believes that such proposed means and methods of construction will constitute or create a hazard to the work, or persons or property, or will not produce finished work in accordance with the Design-Build Contract Documents.
- g. Undertake the following responsibilities with respect to Program and Project safety:
- i. In coordination with DDC and using the DDC Safety Standards as a reference, prepare Program Safety Standards that meet the needs of this Design-Build Program. This Program-level document will set forth the minimum safety standards for all Projects, procedures for the PMC's review and approval of Design-Builder(s) safety submittals, and procedures for incident reporting. Unless otherwise directed, the PMC will perform all functions assigned to DDC in the DDC Safety Standards.
 - ii. Review and approve (or return for revision) each Design-Builder's DB Safety Program and Site Safety Plan in accordance with the Design-Build Program Safety Standards.
 - iii. Monitor Design-Builder compliance with (1) DB Safety Program, (2) Site Safety Plan, (3) Program Safety Standards, and (4) all applicable regulations that pertain to construction safety.
 - iv. Promptly notify the Commissioner and the Design-Builder(s) if the PMC observes any hazardous conditions at the site or non-compliance by the Design-Builder(s) with its DB Safety Program, Site Safety Plan, Program Safety Standards, any applicable safety regulations or subcontract requirements.

- v. In the event of an emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety of any person require immediate action, provide such labor, materials, equipment and supervision necessary to cure such emergency condition. The PMC will immediately notify the Commissioner of any such emergency condition.
 - vi. Monitor the activities of the Design-Builders and conditions at the site for conformance with the Design-Build Contract Documents to ensure that a clean and safe environment is maintained at the site
 - vii. Update and revise the Program Safety Standards as needed or as directed by the Commissioner and ensure each DB Safety Program and Site Safety Plan is revised to reflect such updates and revisions.
- h. Undertake the following responsibilities with respect to Project record keeping:
- i. Keep accurate and detailed written records of the progress of the Project throughout the planning and execution of the Project.
 - ii. Obtain copies of the daily job diary or log book for each Project and review on a weekly basis for compliance with the Design-Build Contract(s).
 - iii. Maintain accurate, orderly and detailed files and written records and documents regarding each Project in electronic and (where appropriate) hard copy, including without limitation, correspondence, minutes and/or reports of job conferences, progress reports, shop drawings and other submissions, Design-Build Contract Documents, including all addenda, change orders, supplemental drawings and all other project related documents. The PMC will provide any records, documents or information concerning the Project to the Commissioner as directed.
 - iv. With respect to Design-Build Work to be performed on a time and materials, unit cost, or similar basis, requiring the keeping of records and computation therefrom, maintain clear and consistent cost accounting records in accordance with generally accepted accounting principles, the Design-Build Program protocols, Design-Build Contract Documents, and applicable City procedures and rules.
 - v. Ensure that the Design-Builders comply with the Design-Build Contract Documents by: (1) producing and keeping current Record Drawings (also known as “As Built Drawings”) in a timely fashion, and (2) submitting such Record Drawings in hard copy, as well as in digital form (i.e., in the form of BIMs). The PMC will review the Record Drawings and verify that such Drawings are accurate and complete.
 - vi. All Project records, including without limitation those specified above, will be available to the Commissioner at all times immediately upon request, and the Commissioner will have the right to remove such Project records and make copies thereof.
- i. Monitor compliance by the Design-Builders with the following requirements applicable to the work: (1) New York State Labor Law; (2) Americans with Disabilities Act (ADA), (3) requirements for the participation of LBEs, (4) requirements for the participation of M/WBE’s, and (5) the project labor agreement applicable to all Projects.
 - j. Prepare correspondence or other communications to the Design-Builders as required in order to advance the Project, including without limitation letters for the signature of the Commissioner or the Commissioner’s Representative.

- k. Prepare and update trend analysis and tracking based on Earned Value indicators - EAC/ETC (Estimate at Completion/Estimate to Complete).
- l. Ensure the Design-Builders are taking pre-construction photographs and photographs during construction to document the progress of the Design-Build Work, in accordance with the Design-Build Contract Documents. For each Project, the PMC will collect such photographs weekly and will include photographs in each monthly progress report. The PMC will electronically catalogue, tag, store photographs in an identifiable index in a format approved by the Commissioner. Such index must be searchable by name, date, Project, location, and other tagged characteristics (e.g., trade, room, location, report number, etc.).
- m. The PMC will coordinate remote monitoring of the construction progress and make such remote monitoring accessible to parties authorized in writing by the Commissioner.
- n. Undertake the following responsibilities with respect to substantial completion of each Project:
 - i. Accompanied by the Commissioner’s Representative, inspect the Project.
 - ii. Furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished Design-Build Work.
 - iii. Make recommendations to the Commissioner regarding a determination of Substantial Completion of Design-Build Work.
 - iv. Prepare and/or finalize all necessary punch lists, including completion dates for all items, and expedite execution of the same by the Design-Builders.
 - v. Perform the above duties in the event the City is to take over, use, occupy or operate the Project, or any part thereof.
 - vi. Prepare detailed construction delay analysis at Substantial Completion of each Project. Submit such analysis with all supporting documentation to the Commissioner in a format acceptable to the Commissioner. Such report must be well organized with appropriate pagination, headings, tabs and/or bookmarks to permit easy navigation of the documents.
- o. Undertake the following responsibilities with respect to DB Final Acceptance of each Project:
 - i. Accompanied by the Commissioner’s Representative, inspect the Project.
 - ii. Furnish a detailed report to the Commissioner setting forth any discrepancies or deficiencies in the finished Design-Build Work.
 - iii. Make recommendations to the Commissioner regarding a determination of DB Final Acceptance of Design-Build Work, including, but not limited to, solutions to any post-occupancy issues.
 - iv. Assemble and deliver to the Commissioner all Record Drawings (also known as “As-Built Drawings”). Such Record Drawings will be submitted in hard copy, as well as in digital form (i.e., in the form of BIMs). The PMC will review the Record Drawings and verify that such Drawings are accurate and complete. The PMC will notify the Commissioner of any issues, problems or observations relative to such Record Drawings.
- p. Collect all warranties and/or guarantees due from the Design-Builders, in accordance with the Design-Build Contract Documents, maintenance and operations manuals, keying schedules and other data required of the Design-Builders, and maintain

photographic records, material and equipment delivery records, visual aids, charts and graphs. The PMC will ensure that all such warranties and/or guarantees from the manufacturer, as well as maintenance and operations manuals, are organized and available in the BIM.

- q. Services During Post Construction Phase: The Services to be provided by the PMC after the completion of construction may include without limitation the Services set forth below.
 - i. Manage and supervise the delivery and installation of fixtures, furniture and equipment for the Project, as specified by the Commissioner.
 - ii. Manage and supervise user acceptance orientation sessions for all equipment and/or systems installed. Such orientation sessions will provide instructions regarding the use and navigation of project information and records in digital form (i.e., in BIM), including As Built Drawings.
 - iii. Assist the Commissioner and/or Design-Builders in obtaining a permanent Certificates of Occupancy for each Project.
 - iv. Prior to the expiration of the guarantee period set forth in each Design-Build Contract, inspect the Project and furnish a report to the Commissioner describing in detail any finished Design-Build Work in which defects of materials or workmanship may have appeared or to which damage may have occurred because of such defects, during the applicable guarantee period.
- 6. Environmental Review and Compliance Support Services. The PMC may be required, at the direction of the Commissioner, to provide Services necessary to ensure continued compliance with the Final Environmental Impact Statement (FEIS).
- 7. Environmental Assessment and Geotechnical Services. The PMC may be required, at the direction of the Commissioner, to provide environmental assessment, geotechnical, and related laboratory testing services.
 - a. Personnel providing such Services must be appropriately licensed in the State of New York and are subject to approval of DDC's Office of Environmental and Geotechnical Services ("OEGS") in addition to any approvals necessary for Subcontractors in accordance with Appendix A. Such personnel must meet the minimum title requirements set forth in Exhibit E. Laboratory testing Services utilized by the PMC, including the proposed laboratory, must also be approved by OEGS. The PMC will cooperate fully with OEGS in providing information requested by OEGS. The Commissioner may issue standards and requirements for personnel and/or testing laboratories, including personnel standards and requirements that differ from those set forth in Exhibit E.
 - b. All geotechnical reports, including without limitation technical reports, recommendations, opinions, plans and specifications, must be signed and sealed by a Professional Engineer licensed by the State of New York.
- 8. Specialty Services
 - a. Performance of the Services provided for in this Agreement may require the PMC to subcontract with experts and specialists in multiple specialty fields, including, but not limited to:
 - i. Various Correctional Specialties
 - ii. Telecommunications
 - iii. Security

- iv. Audio/Visual
 - v. Elevators
 - vi. Food Service
 - vii. Historic Preservation
 - viii. Interior Design
 - ix. Sustainability
 - x. Medical Facilities & Equipment
 - xi. Landscape Architecture
 - xii. Insurance
 - xiii. Commissioning
 - xiv. Special Inspections
- b. The Commissioner may set minimum requirements for all titles and personnel and may amend such minimum requirements in the Commissioner's sole discretion. Minimum requirements for titles anticipated to be necessary for the Design-Build Program and Projects are set forth in Exhibit E. Such minimum requirements are not exhaustive and will not be deemed to limit the Commissioner's authority to set requirements for additional titles or personnel to amend such minimum requirements at any time during the term of this Agreement.
9. LEED Oversight Services
- a. The PMC will provide LEED oversight Services for each Projects, from initial planning and registration to final award of the LEED certification specified in each Design-Build Contract. For each Project, the PMC will designate a LEED Oversight Manager to:
 - i. Create a task matrix that identifies key players, responsibilities for LEED certification, and required actions.
 - ii. Establish environmental goals, identify LEED credits to target, and evaluate risks for non-compliance.
 - iii. Assist and facilitate achievement of LEED goals.
 - iv. Monitor the LEED submittal process and help ensure timely submittals, reviews, resubmittals, and signoffs.
 - v. Track the project's progress toward LEED certification throughout the Project.
 - vi. Draft reports for the Mayor's Office of Environmental Coordination.

III. Project Control

1. General. The PMC will provide all Project Control functions necessary for proper administration of the Design-Build Program and Projects, including, but not limited to, the Services set forth below.
2. Program Scope Management. The PMC will develop a Scope Management Plan, which will describe how the Design-Build Program and Project scopes will be defined, developed, monitored, controlled, and validated.
 - a. The components of the Scope Management Plan will include but not be limited to:
 - i. Process for preparing a Project Scope Statement.
 - ii. Process that enables the creation of the WBS from the detailed Project Scope Statement. The PMC will be provided with copies of DDC's existing operating procedures and job aids.
 - iii. Process that establishes how the Scope Baseline will be approved, maintained and revisited during change management efforts.

- iv. Process that specifies how formal acceptance of the completed project deliverables will be obtained.
 - b. The PMC will collect requirements, which describe how individual requirements meet the business needs for the Design-Build Program. This may require elaboration in the form of business requirements, stakeholder requirements, solution requirements, transition and readiness requirements, project requirements, and quality requirements.
 - c. PMC will develop, control, and validate the Project Scope Statement(s), which will include the Project scope description, deliverables, acceptance criteria, and exclusions. PMC will develop and manage the program and project specific Work Breakdown Structure (WBS) along with a WBS dictionary, and baselining the scope of the program as appropriate.
3. Change Management. The PMC will develop and implement a program change management notice and tracking system to track all changes to program or project scope, budget, and schedule. The system will be used to track all changes to Design-Build Contracts. The PMC will develop a program and project level change management system for the preparation and maintenance of a change log for the Design-Build Program; identifying all programmatic and project changes (e.g. schedule, cost, and scope), the reason for the change, and any impacts (schedule and/or cost) of each change.
4. Program Schedule Management. The PMC will maintain and manage a Program schedule, and individual Project schedules, using a computerized Critical Path Method (CPM) as a management tool to support timely completion of the Design-Build Program and individual Projects. The CPM will contain necessary program and project level activities, sequencing, and durations, as required. The PMC will:
- a. Develop a Schedule Management Plan and relevant Standard Operating Procedures and Job Aids. The PMC will be provided with copies of DDC's existing operating procedures and job aids
 - b. Develop and maintain integrated project schedules and baseline schedules for the Design-Build Program and Projects.
 - c. Review and evaluate schedules submitted by Design-Builders during the procurement of Design-Build services.
 - d. Review updated Program and Project schedules on a monthly basis, or as necessary, and recommend delay mitigation strategies. The PMC will facilitate a monthly schedule coordination meeting with the Design-Builders and other relevant stakeholders to support accurate reporting and tracking of schedules. Prepare a monthly project controls report reflecting the original Projects' scopes, budgets and schedules to advise the project management staff on overall project progress, achieved deliverables, completed tasks, identify variances and recommend corrective actions where progress or cost overruns are anticipated.
 - e. Manage schedule contingency and implement a contingency draw down plan.
 - f. Prepare and update resource loaded schedule as directed by the Commissioner.
 - g. Review the Design-Builder's weekly/biweekly/monthly progress narratives, schedule updates, and schedule revisions submitted for each project to determine whether these documents accurately represent actual progress and future planning. Identify any issues with the submitted schedules such as float suspension, unreasonable durations or logic ties, missing activities, or improper use of constraints or calendars. The PMC will ensure integrity and comprehensiveness of submitted schedules and their conformance to contract requirements and make recommendations for approval or

revisions. PMC schedule analysis will include labor, material, and equipment availability and trade conflict (if any) between various Project Sites. The PMC will also ensure impacts to the schedule are being properly recorded with attention to the correct assignment of responsibility for any delays and identification of any concurrent delay. The PMC will make recommendations to payment requests by the Design-Builder(s) based on verified actual progress.

- h. Maintain, on a continuous basis, a record of City versus Design-Builder caused delays based on approved CPM and schedule updates.
- i. Maintain a log of delay notices submitted by the Design-Builders and responses issued by the City.
- j. Evaluate schedule and productivity-related issues associated with change orders, claims, and disputes. Issues may include concurrency of delays, acceleration, and responsibility for a delay.
- k. Perform time impact analysis for requested time extensions by the Design-Builder(s), as directed by DDC. Also, prepare responses to extension of time requests and delay claims.
- l. Incorporate change order schedule fragments into the CPM schedule to determine the impact on contract milestones and overall Project completion.
- m. Provide recommendation of schedule baseline and re-baseline and provide justification.
- n. Prepare monthly schedule report (Graphical & Tabular) to include, but not limited to, the following:
 - i. Forecast project schedule completion with varying confidence levels for the Design-Build Program and individual Projects.
 - ii. Review of project schedule update against baseline(s) and analysis of variances
 - iii. Review of detailed schedule reports prepared by others
 - iv. 30-day, 60-day, and 90-day look-ahead schedules, or as directed by DDC
 - v. Identification of critical and near critical paths, and providing explanation for changes in critical path from previous month, and recommended actions to recover time
 - vi. Thorough analysis of schedule updates and schedule trends monthly, and a deep dive analysis at various project milestones, or as required by DDC.
 - vii. Analysis of other key performance indicators as necessary to inform DDC on performance trends.
 - viii. Report on any anticipated delays in design, fabrication, delivery, erection or construction.
- o. Configure enterprise scheduling management system inclusive of the following:
 - i. Efficient data flow from each project to the master database
 - ii. Consistency in configuration across projects
 - iii. Management of global data, EPS, OBS, and role-based security profiles
 - iv. Efficient data exchange with the Design-Builders, Consultants, and relevant stakeholders
 - v. Methodology for importing Design-Builder's schedule data into DDC database

- vi. Standardized functional filters, codes (Global, EPS, Project, WBS, and activity level), and layouts.
 - vii. Standardized calendars (Task and Resources) and usage
 - viii. Configure Risk Categories, Risk scoring Matrices, Risk Thresholds and Risk UDF in scheduling tool
 - ix. Integrate Primavera data and the 3-D BIM developed by the Design-Builder(s) to visualize the construction progress (4-D integration), if directed by DDC.
 - p. Assist with preparation of schedule contract specifications.
 - q. Ensure Design-Builder compliance with the submission requirements outlined in the approved Project BIM Execution Plan.
 - r. Review the adequacy of the personnel, including BIM coordinators, and equipment of the Design-Builder(s) and the availability of necessary materials and supplies to ensure compliance with the Project Schedule(s).
 - s. Develop dashboards for instant access to schedule KPIs and performance metrics. Utilize predictive analytics, as needed, to predict schedule performance.
5. Program Cost Management. The PMC will prepare a Cost Management Plan and assist DDC in performing cost management for the program and all projects in all phases of the Design-Build Program, which includes determining the program budget, estimating costs in all phases of the program as directed, monitoring costs, establishing and maintaining a cost baseline, monitoring and updating the Estimate at Completion (EAC) for all projects under the Design-Build Program, providing a Program level view of costs, and reporting on the Program costs. These reports will include actual expenditures as well as Project cost increases from change logs. The PMC will:
- a. Develop a Cost Management Plan and relevant Standard Operating Procedures and Job Aids.
 - b. Prepare project cost estimates at various milestones as well as estimates to change orders, as directed by DDC, and review cost estimates developed by the Design-Builders. Utilize the 3-D BIM developed by the Design-Builders as appropriate for quantity takeoff to increase accuracy and efficiency.
 - c. Prepare and maintain the Design-Build Program and Projects Baseline Cost.
 - d. Maintain budget reports to assure that actual expenditures are accurately tracked. The Reports will account for various sources of funding for the Design-Build Program.
 - e. Thoroughly analyze EAC updates and cost trends monthly, and conduct a deep dive analysis at Project milestones, or as required by DDC.
 - f. Prepare and implement an earned value management plan.
 - g. Provide monthly Project reports on cost performance that includes, but is not limited to, the following:
 - i. Expenditures to date
 - ii. Program and Projects Risk-Informed EAC with varying confidence levels
 - iii. Review of Program and Projects EAC against baseline(s) and budget, and analysis of variances.
 - iv. Detailed cost forecast
 - v. Recommended strategies for mitigation of cost overruns
 - vi. Percent Complete in terms of expenditures to date and in terms of earned value
 - vii. Early recommendations on budget authorization issues and resolutions to improve project performance metrics

- viii. Cash flow analysis and time-phase cost reports
 - ix. Analysis of earned value metrics and other key performance indicators as necessary to inform DDC on project performance trends.
 - h. Evaluate cost and productivity-related issues associated with change orders, claims, and disputes.
 - i. Manage cost contingency and management reserve, and implement a contingency draw down plan.
 - j. Configure a computerized cost management system inclusive of the following:
 - i. Efficient data flow from each Project to the master database
 - ii. Consistency in configuration across Projects
 - iii. Management of global data, EPS, OBS, and role-based security profiles
 - iv. Efficient data exchange with the Design-Builder(s) and other relevant stakeholders
 - v. Alignment with the Design-Build Program WBS
 - vi. A license management plan, if necessary
 - k. Develop dashboards for instant access to cost KPIs and performance metrics. Utilize predictive analytics, as needed, to predict cost performance.
- 6. Program Risk Management. The PMC will create, manage, and implement a risk management program, which will be documented in a Risk Management Plan.
 - a. PMC will provide Services, including but not limited to: risk identification, qualification, quantification, and mitigation; maintaining program and projects risk registers and reports; tracking all potential risks (threats and opportunities); hosting risk workshops; incorporating identified risks into the program schedule and budget; and issues management. Risk workshops will be held quarterly, or more frequently if necessary.
 - b. Risk management deliverables will include, but are not limited to, the following:
 - i. Risk Management Plan and relevant Standard Operating Procedures and Job Aids
 - ii. Risk identification, assessment, and mitigation strategy
 - iii. Status of risk and contingencies (allocated and unallocated)
 - iv. Quarterly Risk and Issues Report and Register update
 - v. Monitor trend in risk exposure
- 7. Document Control and Data Management.
 - a. The PMC will provide and maintain throughout each Project a digital document control and data management system and collaboration platform for communication and sharing of all project files, documents, and BIMs (“Document Control System”). The data management system, including the categories into which the data is organized, is subject to prior written approval by DDC. Such data management and collaboration platform will have varying levels of access for all project participants, including Design-Builder staff and Design-Builder subcontractors, end-users, and DDC staff. Such data management and collaboration platform will be organized to manage all project related data and documents in a manner consistent with industry best practice. The system will be customized to the needs of the Design-Build Program, will implement established workflow processes, and will be used to assemble the full Program record.

- i. PMC will develop a Document Control System. The PMC will ensure that document control is included in distribution of all Program related documents. The PMC will develop and implement a reporting structure for clear communication between all parties. The data management system, including the categories into which the data is organized, is subject to prior written approval by the Commissioner.
 - ii. Such data management and collaboration platform will have varying levels of access for all project participants, including Design-Builders, Design-Builder subcontractors, Consultant(s), DDC staff and other end-users approved by the Commissioner. Provide the Commissioner with full viewing access rights.
 - iii. Such data management and collaboration platform will be organized to manage all project related data in a manner consistent with industry practice, including without limitation, organization into the following categories: Requisitions for payment, Contract Documents, Sketches, Requests for Information, BIM's, and Shop Drawings. Maintain a centralized, searchable document tracking and control system for collection and distribution for all correspondence, drawings, submittals, contract documents, operating manuals and a resource library of relevant and useful technical information on the various Program and project elements. The Document Control system must facilitate the storage and timely retrieval of this documentation. The PMC will be responsible for identifying, categorizing and organizing all documents, and maintaining an on-site technical resource library. The PMC will also be responsible for using all commercially reasonable means to protect City Sensitive/Confidential information received and/or generated in any form: drawings, specifications, correspondence, manuals, etc. As part of the Document Control function, the PMC will also coordinate with DDC as necessary to facilitate the review, coordination, and control of design-build submittals.
- 8. Project Information Management System (PMIS). The PMC will stand up a Project Management Information System (PMIS) for the Design-Build Program and Projects in order to gather, integrate, and disseminate the outputs of project management processes.
 - a. PMIS will be used throughout the life of the Design-Build Program and will support all aspects of planning, executing, monitoring, and controlling the Design-Build Program and Projects. PMIS will provide access to automated tools, such as cost and schedule software systems, configuration management, work authorization, KPI tracking and reporting tools, document control and data management system, and financials.
 - b. PMIS will be customized to the business requirements and needs of the Design-Build Program and subject to DDC approval.
 - c. The PMC will ensure the compatibility and efficient data exchange between the system and DDC's project management systems and will provide all resources necessary, including IT expertise and Services, to effectuate such efficiency and compatibility and to ensure that such PMIS is user friendly and does not present a burden to City staff, Design-Builders, or other end-users. PMC will be responsible to correct or revise inadequate systems or features at no cost to the City.
 - d. Information contained in the PMIS may be subject to Freedom of Information Law. Reports generated by the PMIS and/or information printed from the PMIS must include automatically generated identifying features, such as headers and footers with the title, Project ID, date, and page numbers, etc. Reports and or printed information from the PMIS must be in a form acceptable to the Commissioner. The PMC will be

directed to address deficiencies in the format and coherence of information printed from the PMIS.

- e. If so directed, the PMC will provide customer support Services to the City, Design-Builders, and/or Consultants in using the proposed PMIS.
- f. In reviewing and evaluating the PMC's performance of Services hereunder, the Commissioner or Commissioner's designee(s) may take into consideration the functionality of the PMIS, user friendliness of the PMIS, and extent of ongoing customer support Services necessary to aid City, Design-Builder, and Consultant end-users, and may consider negative and positive feedback of all end-users, including but not limited to feedback from Design-Builders and Consultants.

IV. Project Administration

1. Project Administration Services: The PMC will provide all project administration Services necessary and required for the inspection, management, coordination and administration of each Project, including all day-to-day Program activities, such that the required design and construction work is properly executed, commissioned, and completed in a timely fashion and conforms to the requirements of the design and construction or Design-Build Contract(s) and to good design and construction practices. The project administration Services to be provided by the PMC will include without limitation the Services set forth in Article 6 and this Exhibit D. The PMC will cooperate in all respects with representatives of the Commissioner concerning all aspects of each Project.
 - a. The PMC will serve as the representative of the Commissioner for all Projects and in all contract requirement matters, as outlined in the Design-Build Contract Documents. DDC will notify each Design-Builder in writing that the PMC has been designated by the Commissioner to serve as their representative in connection with the Project.
 - b. The Commissioner or their duly authorized representative(s) will have the right at all times to inspect the Work of the PMC and its Subcontractors.
 - c. The PMC's Services will include the management, supervision and coordination of any and all Services, including Reimbursable Services, required for the Design-Build Program or any Project.
2. Meetings and General Project Team Coordination
 - a. Participate in and lead bi-weekly coordination meetings with internal and external stakeholders for each Project or Program-wide, as required.
 - b. Support and attend both internal and external meetings, reviews, discussions, conferences, or presentations with DDC staff as required. Attendants may include DDC, DOC, and MOCJ executive leadership as well as representatives from City, State or Federal agencies, Consultants, utility companies, elected officials, and/or others, as approved by the Commissioner. The PMC will arrange for appropriate subconsultant participation. Meetings will typically take place at DDC offices or the Program Office.
 - c. As part of this task, the PMC will provide the following Services:
 - i. Unless otherwise required, prepare draft agenda for all meetings and submit to the Commissioner's Representative for review. Incorporate comments and distribute to meeting attendees as final no less than one (1) Business Day in advance of the meetings.
 - ii. Prepare, and submit draft minutes to DDC attendees for all meetings attended by the PMC within two (2) business days of the meeting. Incorporate DDC comments as required and resubmit revised minutes within one (1) Business Day of receipt of comments. If no comments are received within two (2) weeks, the PMC will finalize meeting minutes without comment from DDC and provide notice to DDC of the same.

- iii. Schedule and attend bi-weekly status meetings with the DDC, and others (as required and/or approved by the Commissioner), to review performance, discuss project staffing, and plans for the upcoming quarter.
- 3. Project administration Services include, but are not limited, to the following:
 - a. Schedule and conduct job meetings with the Design-Builders, representatives of the Commissioner, the sponsoring agency, regulatory agencies and any other entities or individuals involved with the Project to discuss procedures, performance, progress, problems, coordination and clash detection, scheduling and related issues. The PMC will prepare minutes of such meetings in a format authorized by the Commissioner and will distribute such minutes to all attendees.
 - b. Review and evaluate the overall budget for the Project, taking into account all funds available or to be made available, and identify amounts, including contingencies, available for each major activity, including design, construction, and construction management. The budget for the Project must take into consideration any anticipated increases in the cost of labor and/or material. The PMC will provide monthly reports to the Commissioner updating the budget for the Project, including a comparison of the original budget with current disbursements and the estimated cost to complete.
 - c. Provide project management and technical support Services, as required, including the tasks set forth below:
 - i. Maintain, implement and update the PMP.
 - ii. Conduct or participate in project kick-off and weekly progress meetings with project teams, including all City Consultants for the Design-Build Program, and record all minutes of meetings.
 - iii. Provide Project Control functions including, but not limited to, those set forth in this Exhibit D.
 - d. Develop and implement a process to conduct quantitative risk analysis of Project cost and schedules. This involves risk based budgeting analysis of engineering and construction costs. As part of the design quality control process, conduct feasibility, constructability, staging, scheduling and operational reviews for each Project and ensure that any comments can be readily incorporated into final documents.
 - e. Provide Program support Services, including but not limited to drafting documents, assisting with contract negotiations, and providing various contract administration functions in accordance with state, local and federal guidelines, as needed.
 - f. Establish and implement a document tracking and distribution process for all correspondence and documents developed for the Projects. Using Primavera software, or other software approved by the DDC, administer all Program and Project's submittals and request for information process.
 - g. Assist the DDC in identifying Program/Project level staffing resource requirements.
 - h. Assist in identifying and preparing permit applications for the properties.
 - i. Prepare presentations and responses to inquiries from outside entities and the public, as required.
 - j. Manage public participation and outreach efforts for the Design-Build Program.
 - k. Undertake the following with respect to MWBE participation in the Projects:
 - i. Evaluate and recommend appropriate minority, women, small and disadvantaged business enterprise (MWBE) sub-contractor goals and assist in managing the Design-Build Program's MWBE program, including but not limited to working with DDC's Office of Diversity and Industry Relations to conduct outreach activities and other activities that may be required to ensure participation by MWBE enterprises and compliance with MWBE goals.
 - ii. Monitor Design-Builder Compliance with MWBE goals.

- iii. Furnish a monthly report on current status and progress with respect to MWBE goals.
 - iv. Provide analysis and analysis and recommendations on strategies to meet or exceed MWBE goals.
- l. Support the City's oversight and project management of Consultants working on the Design-Build Program (e.g. – Consultants providing environmental review and additional A/E services, etc.).
 - m. Monitor and report on City's Consultants and Design-Builder performance, comparing the approved PMP versus the recommended corrective action, when required.
 - n. At least quarterly, or as directed by the Commissioner, submit performance evaluations, in standard form acceptable to the Commissioner and addressing all subjects directed by the Commissioner, for all Design-Builders.
 - o. In the event the Commissioner implements an award fee or an incentive program for the Design-Builders, coordinate and manage such program(s) and provide detailed reports, in standard form acceptable to the Commissioner, and recommendations at each evaluation cycle with respect to payment of such award fee(s) or incentive(s). Perform such analysis and review necessary to successfully implement such programs.
 - p. Update and review actual and forecasted project costs and integrated project schedules for PMC tasks and other City Consultant activities on a monthly basis. Prepare a monthly report for submittal to DDC.
 - q. Prepare reports to track and monitor progress of design and construction activities, including documentation of actual and forecasted construction in place (CIP), and schedule versus authorized contract budget and schedule.
 - r. Prepare monthly status reports addressing accomplishments, issues, and schedule and budget status, including corrective actions, if required.
 - s. Track Consultant invoices for adherence to the Design-Build Program budget and provide reporting and support Services to facilitate timely processing by DDC.
 - t. Track scope changes and change orders to ensure that change orders are processed in a timely manner. Prepare and present impact on cost and schedule of any and all changes in an organized and consistent manner.
 - u. Brief the Project teams, and others as required, on a regular basis as to the status of the Design-Build Program.
 - v. In support of office management and administration, perform secretarial and clerical tasks utilizing DDC systems or approved PMIS, as appropriate.
 - w. Attend mandatory jobsite inspections. Review and provide comments for jobsite inspection reports prepared by the Consultants. Ensure comments are addressed.
4. With respect to Project Labor Agreement disputes, the PMC will provide such support and assistance to the Commissioner as directed, including but not limited to gathering relevant documents and preparing reports or analysis.
 5. The PMC will undertake the following tasks and responsibilities with respect to payment requisitions submitted by the Design-Builders:
 - a. As the party responsible for ensuring that the requisition process moves smoothly and efficiently, the PMC will work with the Design-Builders and DDC staff to make any changes or adjustments to the payment requisition process as necessary and in accordance with applicable Law. Such changes must be reflected in the Manual.
 - b. Promptly review and process payment requisitions submitted by the Design-Builders for completeness and conformity with the applicable Design-Build Contract Documents and the Design-Build Program protocols, including without limitation partial payments, payments for extra work, substantial completion and final payments.

- i. Verify all estimates for payments of Design-Build Work performed, computations, as well as field measurements and sketches necessary for payment purposes.
 - ii. Determine the amount of liquidated damages, back charges or other deductions to be assessed and the amount of any award fees or incentive payments due, if any.
 - iii. Input payment records into Project Information Module System (PIMS) and coordinate with DDC, as required.
 - c. If the Design-Build requisition is complete and ready for engineering audit review, submit such approved requisition, noting all withholdings and deductions, if any, to the Commissioner's Representative with a written certification by an authorized representative of the PMC in the following form, or other form approved by the Commissioner in writing:
 - i. "I certify that I have verified this estimate and that to the best of my knowledge and belief it is a true and correct statement of the work performed and the materials supplied by the Design-Builder and that all work and material included in this estimate has been inspected by me or my duly authorized assistants and has been found to comply with the terms and conditions of the corresponding contract documents and authorized changes thereto. I further certify that I have verified that certificates of non-discrimination have been obtained from the Design-Builder and all Design-Builder Subcontractors that performed any work covered by this payment and that the Subcontractor Payment Form, if applicable to this payment, has been obtained."
 - d. Payment requisitions submitted by the PMC should be ready for review by DDC Engineering Audit Officer ("EAO"). The PMC will ensure such requisitions are complete and well organized and will act as liaison between the EAO and the Design-Builders and work to ensure harmonious relations.
 - e. If the payment requisition is not ready for submission, the PMC will promptly return such requisition to the appropriate Design-Builder with a detailed report, in standard form, setting forth the issues necessary to be addressed prior to re-submission or reasons why the requisition cannot be processed.
 - f. The PMC will use best efforts to process each payment requisition submitted by Design-Builders within seven (7) Days. The PMC will log and track all payment requisitions submitted and will submit a quarterly report to the Commissioner of payment transactions, including but not limited to processing times for all submitted requisition and details about the outcome of each requisition. In such report, the PMC will include recommendations for improving the requisition process without diminishing the quality of the City's reviews and audits.
 - g. The PMC will ensure that the Design-Builder integrates Primavera cost and schedule data and the 3-D BIM developed by the Design-Builder to capture monthly progress of each Project for all trades for the entire life cycle of the Project, unless directed by DDC. This integration should be detailed enough to capture the cost to completion every month.
- 6. The PMC will undertake the following responsibilities with respect to change order proposals submitted by Design-Builders:
 - a. Review and evaluate all change order proposals for compliance with Design-Build Contract requirements and standards. Prepare and maintain a change order log inclusive of potential change orders. Prepare a report to the Commissioner recommending approval or disapproval of the requested change order in accordance with the DB Contract Documents and Program protocols. Such report will include the PMC's review and evaluation of the following: (1) the validity of the proposed change order, (2) the cost of the proposed change order, including any design costs and

- impacts, (3) the quantities of labor, equipment and materials necessary to perform the proposed change order, and (4) the impact of the change order proposal on the other trades work and overall Project Schedule and Program Schedule.
- b. With respect to VECPs, review the VECP and prepare a detailed analysis for the Commissioner showing the cost impact and quality impact of the VECP on the Project, including but not limited to compliance and other issues presented by the VECP with respect to the environmental impacts that may implicate the FEIS. Submit a report to the Commissioner recommending approval or disapproval of the VECP. Process VECPs in accordance with approved Program protocols.
 - c. The PMC must be prepared to substantiate the information contained in any change order report to the Commissioner, the EAO, the Comptroller and any other agency having jurisdiction in this area, including with respect to VECPs. The Commissioner will make all final determinations regarding change orders, VECPs, modifications and additions to the Design-Build Contract Documents. If directed by the Commissioner, the PMC will negotiate a price, i.e., a lump sum price or unit prices, for the performance of the proposed Design-Build Work change order and submit the same to the Commissioner for approval. If directed by the Commissioner, the PMC will provide cost estimates for the proposed change order.
7. The Design-Build Contract Documents will provide for dispute resolution procedures. The PMC will undertake the responsibilities set forth herein with respect to disputes submitted by the Design-Builders.
 - a. Coordinate all necessary meetings, submittals, and responses in accordance with Program protocols for dispute resolution and the Design-Build Contract Documents. Track submittals and responses to ensure the City's timely response in all instances and circumstances.
 - b. Review, evaluate and prepare a recommended determination with respect to such disputes. The PMC's recommendation will be in writing, and will contain a clearly stated, well-reasoned explanation for the recommendation based upon the information and evidence presented by the Design-Builder and relevant information gathered by the PMC, as well as the Design-Build Contract Documents.
 - c. The PMC may be directed to perform forensic accounting Services and professional engineering Services with respect to disputes, as needed.
 - d. If so directed, the PMC will provide any written reports or analysis performed hereunder in certified form.
 8. The PMC will review all applications for extensions of time submitted by Design-Builders and make recommendations to the Commissioner for approval or disapproval thereof in accordance with Program protocols and applicable Law.
 9. Upon completion of each Project or, if this Agreement expires or is terminated prior to completion of any Project, prior to expiration or termination of this Agreement, submit to the Commissioner originals of all final Project records, including without limitation, (1) all reports for the Project, including inspector's reports, as well as laboratory and plant testing reports; (2) all certificates, warranties and guarantees from manufacturers; (3) office and/or field diaries or log books; (4) all original records with respect to contractor payments; (5) all Record Drawings (also known as "As-Built Drawings"), in hard copy, as well as in digital form (i.e., in the form of BIMs); (6) progress photographs of the construction; (7) the final and complete "As Built" schedule, final cost report; and (8) any other Project records required by the Commissioner.
 10. Upon completion of each Project, the PMC is required to produce all Project records and all Data Management files in an electronic format, accessible and viewable to the Commissioner. The Project records and Data Management files must be organized following the industry best practice, and as directed by the Commissioner.

11. Upon completion of all Projects or, if this Agreement expires or is terminated prior to completion of any Project, prior to expiration or termination of this Agreement, submit a “lessons learned” report and analysis and a revised final Design-Build Manual in PDF and Word format.
12. In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the PMC will diligently render to the City all assistance which the City may require. Such Services will be rendered by the PMC without additional fee or other compensation, except for the costs and expense of personnel who were assigned to the Project as job site or management staff, or comparable personnel if those who were assigned to the Project are no longer employed by the PMC.
13. The PMC will perform such other Project related Services as may from time to time be directed by the Commissioner.

EXHIBIT E: MINIMUM TITLE REQUIREMENTS

Any personnel provided by the PMC must satisfy the minimum requirements for the specific title in which they are performing Services. Minimum requirements per title for the PMC’s personnel, including anticipated titles for future as-needed Services, are set forth below. This list is not intended to be exhaustive and the Commissioner, in their sole discretion, may set new or may revise Minimum Title Requirements. In addition, the PMC may propose additional titles with its proposed Staffing Plan, subject to the Commissioner’s approval in accordance with Article 5.

Title	Years of Relevant Experience	Education	NYS License/ Certificate	Specific Experience
Contract Executive	20	N/A	N/A	Principal or Officer of PMC; 20 years of construction experience, including 8 years of executive or management experience on design-build projects
Program Manager	15	Bachelor’s or advanced degree in real estate, finance, construction management, architecture, engineering, law or related field	N/A	15 years of construction experience, including at least 8 years of design-build experience
Deputy Program Manager	10	Bachelor’s or master’s degree in construction management, architecture, engineering or related field	N/A	At least 5 years of design-build experience
Design Program Manager	10	Bachelor’s degree in architecture or engineering	RA or PE in NYS	At least 5 years of design-build experience
Program Controls Manager	10	Bachelor’s degree in computer science or engineering or related field	N/A	At least 7 years of design-build experience
Program Safety Manager	10	Bachelor’s degree in occupational health or similar field and/or associate degree in safety, health or related field	30-hour OSHA Construction Safety Course; or OSHA Safety and Health Standards for the Construction Industry training program (OSHA 510), or Certified Safety Professional (CSP), or Certified Industrial Hygienist (CIH).	At least 3 years of construction safety experience in NYC
Communication Specialist	8	Bachelor’s degree	N/A	At least 5 years of professional experience in New York City
PLA Advisor	7	n/a	n/a	7+ years of experience in the development and/or negotiation of Project Labor Agreements

				involving multiple-phase, large-scale construction projects in the New York metropolitan area.
Insurance Advisor	15	Bachelor's degree	Chartered Property Casualty Underwriter (CPCU)	15 years' experience providing risk or insurance services/expertise, which must include some experience providing such services for design-build projects.
Information Technology Technician	3	Bachelor's degree in computer science, or related field.	n/a	Experience providing: on-site and remote problem resolution as well as new installations for supported products and services; technical support; network cabling; printer/device troubleshooting. Understanding of basic networking TCP/IP skillset. Ability to manage multiple priorities and follow through on projects to completion. Proficiency with Windows 7/10 and Microsoft Office 2010+. Must maintain current technical expertise in the rapidly changing technology of microcomputers and utilizes state-of-the-art techniques when implementing office automation solutions.
Secretary/Administrative Assistant/Records Aide (Program Office/field office(s) only)	3	n/a	n/a	3+ years of experience with similar work in similar title. Proficiency with Microsoft Word and Excel.

EXHIBIT F: SCHEDULE B: M/WBE UTILIZATION PLAN

SCHEDULE B: M/WBE UTILIZATION PLAN: The PMC's M/WBE Utilization Plan is set forth on the following pages. Such M/WBE Utilization Plan was submitted by the PMC as part of its proposal for the Contract.

EXHIBIT G: PROGRAM OFFICE REQUIREMENTS

1. General.

- a. DDC and the PMC recognize that the design and construction of four (4) new state of the art correctional facilities of the magnitude proposed will require the highest degree of synergy between DDC, the PMC and its Key Personnel, and the Design-Builders, as well as other Consultants engaged by the City to provide services related to the Design-Build Program. This will require the PMC, as directed by the Commissioner, to co-locate personnel, including Subcontractors, in a single Program Office and to co-locate other personnel in field offices at each Site, which field offices are anticipated to be provided by the Design-Builder(s).
- b. The PMC will provide, throughout the term of the Agreement, a Program Office dedicated exclusively to the activities of the Design-Build Program and located within one (1) mile of DDC's main offices, located at 3030 Thomson Avenue, Long Island City, NY 11101. Such Program Office will be in accordance with the requirements set forth in this Exhibit G. All costs and expenses and fees for the Program Office will be determined in accordance with Section 4 of this Exhibit G and paid in accordance with Article 7.

2. Program Office Requirements.

- a. The Program Office, and any additional field offices that the PMC may be directed to provide, will meet the requirements set forth below.
- b. The Program Office must be fully accessible and of sufficient size to comfortably accommodate the PMC's personnel, including co-located Subcontractor personnel and all administrative support staff necessary, with space for City employees providing oversight and support functions for the Design-Build Program, as set forth below. The PMC must consider its future staffing needs for the Design-Build Program when determining the necessary capacity of the Program Office or options available to it to expand the Program Office at a future date. In addition, although the PMC will be required to utilize digital systems as necessary and appropriate, the PMC should also account for sufficient space, furniture, and equipment for the maintenance and short-term storage of voluminous Project records, including payment requisitions from the Design-Builder(s) under review by the PMC and/or City audit personnel. The PMC's Design-Build Manual and Project Management Plan will set forth document management policies and procedures.
- c. The Program Office must have sufficient toilet facilities for all personnel.
- d. At least one (1) large conference room sufficient to hold fifteen (15) or more people.
- e. Work space for at least ten (10) co-located City employees. The City anticipates stationing project management and support services necessary to the Program at the Program Office, including without limitation City engineering audit staff, to maximize cooperative efforts and minimize review and processing times. If the Commissioner determines that more than 10 City employees must be co-located at the Program Office, the actual and reasonable costs incurred by the PMC to accommodate each City employee beyond the 10th City employee will be compensated as Reimbursable Services. The accommodations provided for City staff will be similar to those provided by the PMC for its Assigned Personnel, unless otherwise directed by the Commissioner. The following will also be provided:
 - i. The Program Office will include private office space for two (2) such City employees, and a small private meeting space comfortably accommodating four (4) persons, exclusively for the use of City personnel. The private meeting space may be shared with a private office space. The doors on such offices must include locks and all copies of the keys for such office space will be delivered to the Commissioner.
 - ii. Private office space will be equipped with a networked laser printer (bw, 30+ppm) exclusively for City employees' use during the term of the Contract.
 - iii. The small private meeting space for DDC's exclusive use will be equipped with smart conferencing technology, including a monitor and conference device.

- f. Remote Office Network/Computer Requirements.
- i. The Program Office, and any other remote/field office, will require the following, at a minimum: (a) Internet Connection (Cable, FiOS, or Compatible Service), Access to Email; (c) Printer Device(s) as set forth herein; (d) Local Shared Storage (SAN/NAS/Shared Drive); (e) Capability and Access to a Secured Wireless Network; and (f) an IDS/IPS System.
 - ii. Communication.
 1. The PMC must provide a high-speed broadband connection to the office (FiOS, Cable, DSL or comparable service), with average speeds of no less than 100mbps download/10mbps upload. Connection must be appropriate to establish secure, highly encrypted connection to DDC headquarters across a Virtual Private Network (VPN).
 2. The PMC must implement security policies to protect City data consistent with the City's Cybersecurity Requirements for Vendors and Contractors, available here: <https://www1.nyc.gov/site/doitt/business/it-security-requirements-vendors-contractors.page>
 3. The office must also be equipped as follows to permit, in the Commissioner's sole discretion, the City to install Private Lease Lines:
 - a. Conduit – at least 2” sleeve from the outside wall: 2” EMT Conduit with drag line (or flex pipe equivalent) from penetration point to Server/LAN Room
 - b. Plywood backboard – 4x4'x.75” thick
 - c. Ground Bus Bar - a minimum of three (3) positions for solid #6 ground wire. The PMC is responsible to ensure appropriate gauge is used from the ground source. Appropriate ground sources are:
 - i. Building Service Ground (main ground electrical system);
 - ii. Main Electric Box;
 - iii. Building Steel Pipe;
 - iv. Underground water pipe in direct contact with the earth for 10' or more and electrically continuous to the point where the protector ground wire is installed.
 - d. A Private Lease Line will require at least one (1) dedicated circuit breaker of appropriate current rating per receptacle, which the City will determine upon inspection of the Program Office. At the direction of the Commissioner, the PMC will provide the following: Hubbell twist lock. Fusing and Phase: All circuits are single phase unless otherwise noted.
 - i. NEMA L5-15R: 125 VAC/15Amp;
 - ii. NEMA L5-15R: 125 VAC/20Amp;
 - iii. NEMA L6-15R: 225 VAC/20Amp; or
 - iv. NEMA L6-15R: 225 VAC/30Amp.
 - e. Additional equipment or installations may be required if the City determines to establish a Private Lease Line. If such additional equipment or installations are required, the Commissioner will direct the same as Reimbursable Services.
 4. Telephone service must be provided for all workspaces. This service must include:
 - a. Multiple lines, permitting employees to speak with multiple parties;
 - b. Voicemail – message storage and retrieval, including remote access to voicemail;
 - c. Conference calling; and
 - d. Compatibility with hearing aides.

5. The PMC is required to provide cellular phones and, unless otherwise directed, tablets or other mobile computing device(s) for all Assigned Personnel and the Contract Executive. Mobile communication systems will be achieved via cellular telephones, for project sites where cellular signal strength is lacking, the use of two-way radios/walkie/talkies or comparable systems may be acceptable alternatives.

iii. Devices

1. The PMC will provide personal computers/workstations (“PCS”) for all personnel and City employees at the Program Office.
 - a. The PMC will submit specifications for proposed PCS models prior to purchase or installation of such PCS. Such PCS must be of a model released in the previous six (6) months by the manufacturer and must have the following minimum specifications:

Acceptable Manufacturers	HP, Dell, or approved equal.
Operating System	PCS: Microsoft Windows 10 Anniversary Update (64-bit only) (version 1607 or higher) or later version approved by DDC Servers: Windows 2016 or later
Processor	3+ GHz processor
Memory	minimum 32 GB RAM
Display Resolution	1920 x 1080 or greater True Color video display adapter; 128 MB VRAM or greater; Pixel Shader 3.0 or greater; Direct3D®-capable workstation class graphics card. Resolutions up to 3840 x 2160 supported on Windows 10, 64 bit systems (with capable display card)
Display Card	4 GB G Graphics: DirectX 10 graphics card or approved equal PU with 106 GB/s Bandwidth and DirectX 11 compliant
Hard Disk - 1st Drive	256GB SATA Solid State Drive
Hard Disk - 2nd Drive	2TB SATA Drive
Network	1+GigaBit or better
Pointing Device	MS-Mouse compliant
Monitor	Dual-monitor for all City personnel workstations, unless otherwise permitted. Monitors will be 20-inch or larger
Audio	Speakers

- b. The PMC will perform a compatibility review of DDC’s existing software systems. Unless otherwise directed, PCS will be equipped with all software necessary for the Program, including the latest compatible versions, or approved equivalent, of Primavera EPPM (v.17 or higher/later), AutoCAD (architecture/engineering Construction Collection; 2019 or later), AutoCAD (3ds Max; 2019 or later), Autodesk Revit, Sage Timberline (cost estimating; 2018 or later), Ares Prism (latest), the Microsoft Office Suite, Adobe Acrobat X Pro, anti-virus software, and all other software used by the PMC to perform its services hereunder, including but not limited to all software necessary to utilize the PMC’s PMIS.
 - c. The PMC will replace PCS with acceptable then-current models every five (5) years. The PMC will be compensated for the replacement of PCS for City personnel at the Program Office under Reimbursable Services. The cost of replacing the PMC’s PCS is deemed included in the Multiplier. The PMC will coordinate with DDC to deliver obsolete PCS to DDC.
2. For every 25 persons, one (1) network accessible, high-volume multifunction printer/copier (65+ppm) with printing, scanning, send and store functions.

3. One (1) network accessible, multifunction color printer/copier (30+ppm) with printing, scanning, send and store functions.
4. The Program Office will also include:
 - a. One (1) Gigabit switch;
 - b. One (1) IPS/IDS network device or appliance; and
 - c. One (1) UPS

iv. Work Spaces

1. The Program Office provided by the PMC will include the offices, furniture, accessories necessary and reasonable for PMC's personnel and co-located City employees to perform their duties, including but not limited to office furniture, cubicles and/or desks. All items and /or equipment furnished hereunder will be in excellent condition and functioning properly. All equipment furnished hereunder will be the most current model. All desks and storage space (e.g., filing cabinets) provided for co-located City employees will include lockable drawers and all copies of keys for such furniture and storage will be provided to the Commissioner.
 2. Work space must be equipped with at least, but not limited to, one (1) RJ45 Jack mounted via in-wall socket, Cubicle Panel, Surface Mounted Box, or another compatible medium. Wi-Fi can be configured and used to interconnect network devices, but Wi-Fi must not be the sole connection means: It must be accompanied with a physical wired connection.
 3. The switch provided must be a Gigabit Switch, the port count will be determined by personnel count plus networkable devices (e.g., Printers, Scanners, Shared Storage, etc.) Category 6 Shielded Cable or compatible medium will be used for the connection between the employee's workspace/networkable devices and the gigabit switch. The network IPS/IDS device will help to secure the site population and systems from malicious attacks, which includes virus, malware, phishing, and DOS attacks. If needed DDC IT can furnish a list of acceptable IDS/IPS devices or approve recommended units.
 4. A UPS must be provided to protect the Switch/Server/NAS from power surges, and power strips must be provided of all computer in the workspace. A supply of blank 32GB USB flash drive should be available for data sharing by project personnel.
 5. The network switch(es), NAS, IDS/IPS system are to be housed in a lockable ventilated network cabinet. Ambient room temperature must not exceed 90°F for more than 72 hours.
- g. Office Supplies: The PMC will be responsible for providing all office supplies, including without limitation, toner and ink cartridges and paper for all printers, pens, pencils, stationery, filtered drinking water and sanitary supplies. If at any time the PMC fails to stock any necessary supplies, the City may purchase such supplies or services itself and may deduct the cost of the same from any payment otherwise due to the PMC plus a processing fee of 5%. The City will have no obligation whatsoever to the PMC to mitigate costs or engage in any competitive process or price comparison research prior to making such purchase. In the event that a competitive bid or proposal process is utilized, the processing fee will be increased to 10%.
- h. The PMC will be required to prominently display at the Program Office and any other field or remote office information about the City's Conflicts of Interest Board and the Department of Investigation, including but not limited to the Whistleblower Protection Expansion Act Poster.
3. Selection of Program Office.
- a. The Commissioner will have the right to approve the Program Office. In selecting such office, the PMC will take into consideration, the ease of commuting between the Program Office and DDC's offices, access to transportation options, and the availability of parking for its personnel.

- b. Within twenty (20) Days of the Commencement Date, the PMC will identify potential locations for the Program Office that comply or can be outfitted by the PMC, within a reasonable period, to comply with the requirements set forth in this Exhibit. The PMC must present available options and the strengths and weaknesses of each potential location and the parties will mutually agree, without prejudice to the PMC's obligations to provide a Program Office in strict compliance with the terms of this Exhibit or the City's rights hereunder, which location(s) the PMC should pursue for the Program Office. In the event the PMC and the City cannot agree on a preferred location, the PMC will diligently pursue the location(s) directed by the Commissioner. The PMC will diligently pursue the mutually agreed upon location(s) or the location(s) directed.
- c. Within thirty (30) days thereafter, the PMC will submit supporting materials for negotiation of a monthly lump sum amount and lump sum mobilization payment and schedule and coordinate all necessary meetings necessary between the parties to negotiate such amounts.

4. Program Office Costs and Fees.

- a. Subject to the terms and conditions set forth herein and in Article 7, the PMC will be compensated for mobilizing and providing a Program Office as follows:
 - i. The PMC will be reimbursed for the actual amounts paid to the PMC's landlord for the Program Office, in accordance with the PMC's rental agreement ("PO Lease Cost");
 - ii. The PMC will be paid a monthly lump sum fee for operation of the Program Office ("Monthly PO Operations Fee"); and
 - iii. The PMC will be paid a one-time lump sum fee for mobilization of the Program Office ("PO Mobilization Fee").
- b. During its pursuit of the selected location(s), in accordance with Section 3, above, the PMC will keep the Commissioner's Representative apprised about the location(s), including updated cost estimates for monthly rental fees. Prior to entering into any lease agreement for the Program Office, the PMC will submit a breakdown of the final lease payment terms, showing the amount of each payment and the anticipated due date thereof. The Commissioner will promptly respond and may request additional information and for clarification prior to approving the anticipated PO Lease Costs. The PMC will not execute a lease reflecting a different breakdown in PO Lease Costs than that previously approved by the Commissioner.
- c. The amount of the Monthly PO Operations Fee and the PO Mobilization Fee will be the estimated fair and reasonable cost and expenses to the PMC, respectively, (1) to operate and maintain the Program Office in accordance with the terms of the Agreement and (2) to initially set up and fit out the Program Office in accordance with the terms of the Agreement. The PMC must submit the documentation listed below and all other documentation that may be requested by the Commissioner.
 - i. A detailed estimate of all costs, including anticipated monthly operating and maintenance costs.
 - ii. All pertinent information about the Program Office, including gross square footage, net square footage, square footage allocated to City personnel, office/cubicle/co-working space inventory and planned configurations, and all other notable features or as requested by the Commissioner.
 - iii. Terms of the lease and, if/once available, a copy of the term sheet, final draft or executed lease, monthly rent amount(s), including any periods of rent abatement, deferment or discount, proposed or actual rental period.
 - iv. All documents and calculations used by the PMC in calculating the estimated monthly costs for the Program Office, exclusive of PO Lease Costs and including but not limited maintenance and operating costs. Documents of a confidential or proprietary nature should be marked "Confidential" and/or "Proprietary", as appropriate.
 - v. All documents and calculations used by the PMC in calculating the anticipated mobilization costs for the Program Office, including but not limited to costs for fit out of the Program

Office. Documents of a confidential or proprietary nature should be marked “Confidential” and/or “Proprietary”, as appropriate.

- d. The Monthly PO Operations Fee is deemed to compensate the PMC for (i) all costs and expenses to maintain and operate the office, exclusive of PO Lease Costs, and all other overhead costs related in any way to the Program Office and (ii) all risk of loss and termination or expiration of the Contract, as set forth Sections 6 and 7, below. Except as specifically set forth herein, no other fees or expenses related to the Program Office will become due and payable to the PMC at any time for any reason.
- e. The Monthly PO Operations Fee may be adjusted every three (3) years upon written application of the PMC, subject to the following terms and conditions.
 - i. Within sixty (60) Days of the 3rd anniversary of the Commencement Date, and every 3rd anniversary thereafter, the PMC may request that the Monthly PO Operations Fee be adjusted. The PMC’s written request must include all supporting documents and information necessary and/or requested to demonstrate that, using the PMC’s standard cost accounting and generally accepted accounting principles, the PMC’s average monthly cost to maintain and operate the Program Office has increased or, if the PMC has been directed by the Commissioner to increase the capacity of level of service at the Program Office, that the average monthly cost to maintain and operate the Program Office will increase during the next three (3) years. The PMC will submit all documents and records requested by the Commissioner related to such negotiations, including but not limited to financial statements, cost substantiation, and receipts or invoices related to operation and overhead costs for the Program Office.
 - ii. If the Commissioner, in their sole discretion, determines that an adjustment of the Monthly PO Operations Fee is fair and reasonable, the Monthly PO Operations Fee will be adjusted as set forth in the Commissioner’s determination. The adjusted fee set forth in the Commissioner’s written determination will become the Monthly PO Operations Fee as of the date of such determination. Any adjustment to the Monthly PO Operations Fee will be applied on a prospective basis only and will have no impact on the rate paid to date. Failure of the PMC to strictly comply with the terms and conditions set forth above, including but not limited to requirements for timely submission of the application for an adjustment, will be deemed a waiver of the PMC’s right to seek an adjustment to the Monthly PO Operations Fee for that particular anniversary year. The Commissioner will have no right to adjust the Monthly PO Operations Fee if an application for an adjustment is not made by the PMC, as set forth herein.
- f. Except as specifically set forth herein, the PO Mobilization Fee is deemed to compensate the PMC for all costs and expenses associated with setting up the Program Office to meet the requirements set forth in this Exhibit G and any rental and maintenance charges anticipated to be incurred by the PMC prior to the PMC’s completion of its Program Office mobilization work. In the Commissioner’s sole and absolute discretion, the Commissioner may direct the PMC to provide additional services and equipment for the Program Office as Reimbursable Services in accordance with Article 6.5.
- g. Payment of PO Lease Costs: After submission of a fully executed, unredacted copy of the lease for the Program Office and upon the written determination that the Program Office is operational and complies with this Exhibit G, the PMC will be eligible for reimbursement of PO Lease Costs actually incurred, subject to the PMC’s compliance with Article 7 of the Contract and this Exhibit G.
- h. Payment of Monthly PO Operations Fees: After the parties have agreed upon a fair and reasonable price for the same, set forth in writing by the Commissioner, and upon the written determination by the Commissioner that the Program Office is operational and complies with this Exhibit G, the PMC will be eligible for the payment of the Monthly PO Operations Fee, subject to the PMC’s compliance with Article 7 of the Contract and this Exhibit G.
- i. The PMC will only be eligible for reimbursement of PO Lease Costs and payment of Monthly PO Operations Fees for those periods during the term of the Contract that the Program Office is

operational and meets the requirements set forth in this Exhibit G, as determined in writing by the Commissioner in their sole discretion.

- i. All costs incurred by the PMC for the lease, operation and maintenance of the Program Office during mobilization prior to the date of the Commissioner's determination are deemed included in the PO Mobilization Fee.
 - ii. If at any time during the term of the Contract, the Commissioner determines that the Program Office is not operational or fails to meet the requirements set forth herein, payment of PO Lease Costs and the Monthly PO Operations Fees may be suspended until such time as the PMC takes action to return the Program Office to operation or bring the Program Office into compliance with this Exhibit G and the Commissioner determines in writing that such payments may re-commence.
- j. Payment of Mobilization: After the parties have agreed upon a fair and reasonable price for the same, set forth in writing by the Commissioner, and upon submission of an executed lease for the premises and approved mobilization schedule, the full amount of the PO Mobilization Fee will become due and payable, subject to the PMC's compliance with Article 7 of the Contract.

5. Ownership of Components.

In the event the PMC elects to purchase any of the components of the Program Office to be provided hereunder, such components will remain the sole property of the PMC. For the avoidance of doubt, equipment purchased in accordance with Article 6.5 is property of the City of New York as set forth therein.

6. Risk of Loss.

The entire risk of loss with respect to the Program Office will remain solely and completely with the PMC, including but not limited to risk of loss related to loss or destruction of the Program Office or any component thereof or equipment or personal property therein. The PMC will be responsible for the cost of any insurance coverage determined by the PMC to be necessary for the Program Office.

7. Risk of Termination.

The PMC bears the entire risk that this Agreement will expire or be terminated prior to the expiration of the PMC's lease for the Program Office or other ongoing obligation entered into by the PMC in any way related to the Program Office. The PMC is solely responsible to mitigate the cost of such risk when negotiating the terms and conditions of its lease and any other obligations entered into by the PMC. In the event of termination or expiration of this Agreement in accordance with the terms and conditions of Article 10 of Appendix A, the City's obligation to pay Program Office fees set forth in Section 4 of Exhibit G, or other any costs and expenses the PMC may incur with respect to the Program Office or Program Office operations, will be limited to: (A) all amounts due and payable up to the effective date of termination, pro-rated if the effective date of termination falls in between the monthly period of the lease, plus (B) if the Contract is terminated by the City Without Cause before the fifth anniversary of the Commencement Date, a sum equal to three months' worth of the average monthly PO Lease Cost, calculated by adding all PO Lease Costs that would have been payable by the PMC during the initial term of its lease, divided by the total number of months in the initial term of the lease. No payment pursuant to (B) hereof will be due if the Contract is terminated for Contractor Default in accordance with Section 10.03 of Appendix A.

8. Replacement.

In the event the Program Office or any component(s) thereof is lost, damaged, or determined by the Commissioner to be defective or noncompliant with the requirements set forth in this Exhibit G, the PMC will be responsible, at its sole cost and expense, to replace such component(s) within two (2) weeks from the date of such loss or damage, or written notice from the Commissioner that the component is defective or noncompliant.

9. Compliance.

The Program Office provided by the PMC in accordance with this Exhibit G will comply with all applicable federal, state and local laws, rules and regulations, including without limitation, the New York City Building Code.

10. Utilities.

The PMC will be responsible for providing all utilities for the Program Office, including without limitation, water, heat, air conditioning, electricity, internet and telephone service.

11. Maintenance Services.

The PMC will be responsible for providing all cleaning and maintenance services in connection with the Program Office, including without limitation maintenance of all equipment, including equipment provided by the PMC for City personnel use.

EXHIBIT H: HIRING AND EMPLOYMENT RIDER

HIRENYC AND REPORTING REQUIREMENTS

Introduction

This Rider will apply to all contracts for goods, services, and construction with a value of one million dollars (\$1,000,000.00) or more, provided, however, that certain requirements of the Rider will only apply as indicated below. This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by law. In general, the HireNYC process under this Rider requires the Contractor to enroll with the HireNYC portal for the City of New York (“the City”) found within the Department of Small Business Service's (“SBS”) website, to disclose all entry to mid-level job opportunities described in this Rider arising from this contract and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

HireNYC Requirements

A. Enrollment

The Contractor will enroll with the HireNYC system, found at www.nyc.gov/sbs, within thirty (30) days after the registration of this Contract pursuant to Section 328 of the New York City Charter. The Contractor will provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from this contract and located in New York City, and, if so, the approximate start date of the first hire.

B. Job Posting Requirements

Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from this contract and located in New York City, if any, which will be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor ([see Column F of https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls](https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls)). The information to be updated includes the types of entry and mid-level positions made available from the work arising from the contract and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process for these positions, and the contact information for the Contractor's representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the contract and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor will provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor will be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year will run from the date of the registration of the contract and each anniversary date.

These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider will be interpreted so as to require the Contractor to employ any particular worker.

In addition, the provisions of this Rider will not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Section 22-505 of the Administrative Code of the City of New York. The Contractor will not be required to report such openings with HireNYC. However, the Contractor will enroll with the HireNYC system pursuant to Section A, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

C. Breach and Liquidated Damages

If the Contractor fails to comply with the terms of the contract and this Rider (1) by not enrolling its business with HireNYC; (2) by not informing HireNYC, as required, of open positions; or (3) by failing to interview a qualified candidate, the contracting agency may assess liquidated damages in the amount of two-thousand five hundred dollars (\$2,500.00) per breach. For all other events of noncompliance with the terms of this Rider, the agency may assess liquidated damages in the amount of five hundred dollars (\$500) per breach.

Furthermore, in the event the Contractor breaches the requirements of this Rider during the term of the contract, the City may hold the Contractor in default of this contract.

Audit Compliance

In addition to the auditing requirements set forth in other parts of the contract, the Contractor will permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for work arising from the contract and located in New York City. The Contractor will permit an inspection within seven (7) business days of the request.

Other Reporting Requirements

The Contractor will report to the City, on a monthly basis, all information reasonably requested by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by Law or rule, or as otherwise requested by the City.

Construction Requirements

Construction contractors will comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the work of the contract and located in New York City) as set forth above.

In addition, construction contractors will reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the work of this contract.

Further, this contract will be subject to a project labor agreement if so required elsewhere in this contract.

Federal Hiring Requirements

The Contractor will comply with all federal hiring requirements as may be set forth elsewhere in this contract, including, as applicable:

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic

opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

EXHIBIT I: APPENDIX A

APPENDIX A

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

APPENDIX A

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

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ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

C. “City” means the City of New York.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES

Section 2.01 Procurement of Agreement

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

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

Section 2.02 Conflicts of Interest

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

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

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

Section 2.03 Certification Relating to Fair Practices

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

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

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

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

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

Section 2.04 Disclosures Relating to Vendor Responsibility

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

Section 2.05 Disclosure Relating to Bankruptcy and Reorganization

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

Section 2.06 Authority to Execute Agreement

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

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

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

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

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

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

Section 3.02 Subcontracting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

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

Section 4.02 Employees and Subcontractors

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

Section 4.03 Removal of Individuals Performing Work

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

Section 4.04 Minimum Wage; Living Wage

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

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

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

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

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

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

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

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

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

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

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

Section 4.05 Non-Discrimination in Employment

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

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

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

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

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during

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which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

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

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

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

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

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

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

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

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

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

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compensation, layoff, termination, and all other terms and conditions of employment;

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

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

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

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

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

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

a. Disapproval of the Contractor; and/or

b. Suspension or termination of the Agreement; and/or

c. Declaring the Contractor in default; and/or

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

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

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

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

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

Section 4.06 Paid Sick Leave Law

A. Introduction and General Provisions.

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.² Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. *Notice of Rights.*

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

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

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

G. *Enforcement and Penalties.*

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

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

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

Section 4.07 Whistleblower Protection Expansion Act

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

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

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

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

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

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

4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

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

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

ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

B.

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

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

C.

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

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

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

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

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

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

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

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

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

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

either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

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

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

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

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

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

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is

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prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

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

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

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

E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from

the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

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

ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

Section 6.01 Copyrights and Ownership of Work Product

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

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

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

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

non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

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

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

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Exhibit A (with the minimum limits and special conditions specified in Exhibit A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage

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be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

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

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

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

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;
8. Other forms approved by the New York State Workers’ Compensation Board; or
9. Other proof of insurance in a form acceptable to the City.

Section 7.03 Other Insurance

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Exhibit A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees,

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and any other entity that may be listed in Exhibit A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. If the Contractor is providing professional services pursuant to this Agreement, Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Exhibit A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

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

D. *Crime Insurance.* If indicated in Exhibit A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Exhibit A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Exhibit A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Exhibit A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Exhibit A.

Section 7.04 General Requirements for Insurance Coverage and Policies

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Exhibit A.

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

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Exhibit A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Exhibit A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Exhibit A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.05 Proof of Insurance

A. For each policy required under Section 7.03 and Exhibit A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Exhibit A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or
2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Exhibit A and to the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.06 Miscellaneous

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Exhibit A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Exhibit A) and contain the following information to

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the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Exhibit A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Exhibit A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Exhibit A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Exhibit A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Exhibit A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Exhibit A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

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

Section 8.03 Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.04 Infringement Indemnification

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of

services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

Section 8.06 Actions By or Against Third Parties

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

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

Section 8.07 Withholding of Payments

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

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

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

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

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES

Section 10.01 Termination by the City Without Cause

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

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as

including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord, except as set forth in Section 7 of Exhibit G to the Agreement.

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

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord, except as set forth in Section 7 of Exhibit G to the Agreement.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

Section 10.03 Contractor Default

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- A. The City shall have the right to declare the Contractor in default:
1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;
 2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;
 3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;
 4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:
 - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
 - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
 - c. a criminal violation of any state or federal antitrust law;
 - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;
 - e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
 - f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.
 5. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
 6. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement,

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or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

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

Section 10.04 Force Majeure

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

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services)

because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

F. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;

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

4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and

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

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

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

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

Section 10.07 Liquidated Damages

If Exhibit A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

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

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section 11.02 is applicable to contracts valued at \$25,000.00 and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

Section 12.03 Resolution of Disputes

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Section 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

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

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

resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

3. **Agency Head Determination.** Within 30 Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

4. **Finality of Agency Head Decision.** The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.

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

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

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

3. **Comptroller Investigation.** The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also Exhibit An

informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

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

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

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

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

G. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and

(v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

2. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.

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

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

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

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

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

Section 12.04 Claims and Actions

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officials, Agents, or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Unlawful Discrimination in the Provision of Services

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual

orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

Section 13.05 Americans with Disabilities Act (ADA)

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

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

Section 13.06 Voter Registration

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

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

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

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

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

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor

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amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

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

6. For the purposes of Paragraph A of this Section 13.06, the word “Contractor” shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

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

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

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

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

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

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

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

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

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

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

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

b. display any political preference or party allegiance;

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

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

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

Section 13.07 Political Activity

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

Section 13.08 Religious Activity

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

Section 13.09 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix.

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§§ 2401 *et seq.*, or the regulations of the United States Department of Commerce promulgated thereunder.

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

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

Section 13.10 MacBride Principles

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

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

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

Section 13.11 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its

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contractual obligation to such participating City agency. “Contractors” to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

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

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

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

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

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

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

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

Section 13.12 Distribution of Personal Identification Materials

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

Section 14.02 Merger

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

Section 14.03 Headings

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

Section 14.04 Notice

A. The Contractor hereby designates the business address and email address and the Department hereby designates the business address specified in Exhibit A (and if not specified in Exhibit A, as specified at the beginning of this Agreement) as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

C. Nothing in this Section 14.04 shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

Appendix A January 2018 Final (PMC Only)

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contract except

Full name of Proposer or Bidder *[below]*

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By _____

Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

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

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

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

[Signature of authorized official, broker, or agent]

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

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



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

DOI CAN ALSO BE REACHED BY MAIL
OR IN PERSON AT:

New York City Department of
Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:
www.nyc.gov/doi

All communications are confidential



Or scan the QR Code above
to make a complaint

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

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages