

Request for Proposals

# Marketing for NYCEDC Properties

**Release Date**

May 11, 2023

**Submission Deadline**

June 20, 2023





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## **I. EXECUTIVE SUMMARY**

### **A. Background.**

New York City Economic Development Corporation (NYCEDC) is looking to attract and retain a marketing firm that can assist in marketing needs to support leasing and branding endeavors, primarily, but not inclusive of Sunset Park area priority properties: the Brooklyn Army Terminal and the Made in NY Campus. NYCEDC reserves the right to also include other priority properties as they become available.

NYCEDC's and the City's investments in Sunset Park anchor a continued industrial economy in the neighborhood and celebrate this significant maritime and industrial area. Investments in the area are driven by NYCEDC's vision for Sunset Park—to promote industrial redevelopment and job creation in Sunset Park while retaining existing industrial jobs, and to maximize waterfront access and open space, among other priorities.

### **B. Background and Information on the Sites:**

#### **1. Made in New York Campus**

Address: 4100 1st Avenue, Brooklyn, NY 11232  
Borough: Brooklyn

NYCEDC leases Bush Terminal from the City of New York pursuant to long term leases. The Made in New York (MiNY) Campus at Bush Terminal is anticipated to have over 3,000 employees and is located in Sunset Park, in one of the city's busiest industrial hubs. Bush Terminal was constructed as an extensive industrial complex on the Brooklyn waterfront, designed to integrate the commercial and industrial functions of manufacturing and warehouse concerns with rail and water transportation. The terminal is largely intact today.

The area's unique character and assets have made it a home to nearly 20,000 workers across New York City industries. Existing industry sectors include: wholesale trade/manufacturing warehousing, distribution, apparel, printing, and fabricated metal. NYCEDC also anticipates growing industry sectors to include: small-scale precision manufacturers, media and digital companies, and specialty food product manufacturers.

The Sunset Park area and waterfront are an important part of the region's economy and transportation network, a hub of maritime activity and a thriving industrial business zone—a unique nexus in New York City.

The Made in New York Campus at Bush Terminal in Sunset Park will bring together an affordable, best-in-class manufacturing hub with film and media production facilities that will advance diversity and equity in the industry and create thousands of jobs. On the north campus there will be 5.3 acres of new public space adjacent to Bush Terminal Piers Park, along with new amenities to the community and campus workers: landscaped waterfront access, enhanced streetscapes, and pedestrianized plazas.

The future of the MiNY Campus reflects the goals of the Industrial Action Plan, released in 2015 by the mayor to spur thousands of good-paying manufacturing jobs through large investments in City-owned assets.

The MiNY Campus will join the Brooklyn Army Terminal, with its 100+ manufacturing businesses and thousands of jobs, and nearby South Brooklyn Marine Terminal with its recent public and private investments, in transforming the Sunset Park waterfront into a hub of industrial innovation.

## 2. Brooklyn Army Terminal

Address: 140 58th Street Brooklyn, NY 11220

Borough: Brooklyn

NYCEDC has operated the Brooklyn Army Terminal (BAT) on behalf of the City since 1986. Drawing on more than 50 years of experience managing industrial facilities, NYCEDC ensures that tenants receive the highest levels of service and satisfaction.

BAT serves as a hub for advanced innovative manufacturing, as well as fashion, food, and traditional manufacturing. The campus is built with a flexibility that can meet the needs of 21st-century manufacturing businesses.

Located on the Sunset Park waterfront in Brooklyn, BAT provides manufacturers with the tools and space they need to grow and succeed. BAT is home to over 100 businesses and over 4,000 tenants of all sizes, including large anchor tenants, growth-stage businesses, food manufacturers, life science tenants and more. BAT isn't only a community of manufacturing businesses; it's a vital part of its local community and economy.

The campus and its tenants partner with Sunset Park groups and organizations to train and hire local workers; and BAT hosts a variety of programs, including arts and cultural events, to bring tenants and the community together. BAT also boasts public waterfront space that is open 365 days a year for the community to enjoy and can be accessed via NYC Ferry service.

BAT is conveniently located to take advantage of proximity to local, regional, and international transportation networks to enable tenants to expand their reach and lower business costs.

### C. **Overview of Request for Proposals.**

The marketing firm shall be responsible for the development and implementation of various marketing tactics at the Brooklyn Army Terminal and the Made in NY Campus as well as other properties made priority by the New York Economic Development Corporation (NYCEDC) that support our placemaking and leasing activities to help brand the campuses as well as drive potential new business and traffic to the facilities. The firm shall act as the primary point of contact for NYCEDC's marketing efforts at these facilities, working primarily with the NYCEDC Marketing team as well as at times the Asset Management team.

The scope of the marketing work at the sites shall include, but not be limited to:

1. Developing advertising marketing plans; creating and writing marketing and leasing materials such as power point decks, leasing sell sheets, signage, supporting installation of renderings, blowups, copywriting/editing, and graphic design and art direction to support brochures, flyers, signage, videos, and other printed or digital matter, and planning and facilitating experiential marketing events.
2. Developing visual concepts and designs that are consistent with NYCEDC's brand guidelines.
3. Providing art direction and guidance to any external vendors or partners involved in the design process.
4. Developing a media plan for NYCEDC's marketing efforts, including both traditional and digital channels.
5. Conducting market research to identify the most effective channels for reaching NYCEDC's target audience.
6. Developing a budget for media spend, including recommendations for allocating funds across different channels.
7. Editing and retouching photos for use in marketing materials, including brochures, flyers, and other printed matter (and providing guidance to any external vendors or partners involved in the photo editing process).
8. Developing animated content for use in digital marketing materials, including web and social media content, ensuring that all animated content is consistent with NYCEDC's brand guidelines.
9. Providing guidance to any external vendors or partners involved in the animation process.
10. Supporting on full scope of social media strategy from media spends to creation of content and messaging to ensure the campus communications is on brand and in support of placemaking and tenanting activities.

**D. Timeline.**

Time Period	Milestone
May 11, 2023	Release of the RFP
June 5, 2023	Q&A submission to project email address by 5pm
June 12, 2023	Q&A posted to external website: <a href="https://edc.nyc/rfps">https://edc.nyc/rfps</a>
June 20, 2023	Deadline for submission for RFP by 11:59PM via URL provided on external website- <a href="https://edc.nyc/rfps">https://edc.nyc/rfps</a>

E. **Respondent Profile.**

Respondent(s) shall submit a proposal that addresses all elements described herein. The Respondent(s) shall clearly indicate how they will address each element and include a fee and cost schedule for their proposal of activities, operations, or otherwise. Respondents may be, but are not limited to, publicly owned or privately-owned external affairs firms and non-profits.

F. **NYCEDC's Role.**

NYCEDC may play a variety of roles depending on the needs of the selected Consultant and the details of the proposed Services. NYCEDC will oversee the selected Consultants and provide strategic support and serve as facilitator where necessary. NYCEDC may serve on an executive and/or advisory board. NYCEDC may provide publicity and marketing support.

Subject to the availability of funds and the responses to this RFP, NYCEDC may select one or more Consultants to provide the Services. The Consultant(s) shall be experienced in all aspects of the Services. The Consultant(s) will commence the respective Services upon a written Notice to Proceed from NYCEDC or upon execution of a consultant contract by the Consultant(s) and NYCEDC substantially in the form of the draft consultant contract attached hereto as Appendix 4 (the "Contract Draft"). The Contract Draft is an initial draft subject to further review and revision by NYCEDC prior to execution. NYCEDC shall not be bound to the terms of any aspect of the Contract Draft, and the final acceptance of any successful proposal shall be subject to, and contingent upon, the negotiation between the parties of a contract in form and substance acceptable to NYCEDC. **Nevertheless, respondents should review the Contract Draft and be familiar with all of the terms and conditions set forth therein prior to submitting a proposal.**



## **II. SPECIFIC SCOPE OF SERVICES**

In its delivery of the Services, the Consultant shall perform a series of tasks (“Tasks”) under the direction of the project team (the “Project Team”), which will consist of NYCEDC representatives working with selected Consultants to complete the program. The Consultant’s implementation of each Task shall be subject to the Project Team’s approval.

### **Task 1: Copywriting/editing**

- A. Develop written content for marketing materials, including brochures, flyers, and other printed matter
  - B. Edit and proofread content for accuracy and clarity
  - C. Ensure that all written content is consistent with NYCEDC’s brand voice and tone
- Deliverable: final copy for use in marketing materials

### **Task 2: Graphic design and art direction**

- A. Design and layout marketing materials, including brochures, flyers, signage and other printed matter
  - B. Develop visual concepts and designs that are consistent with NYCEDC’s brand guidelines
  - C. Provide art direction and guidance to any external vendors or partners involved in the design process
- Deliverable: final designs for use in marketing materials

### **Task 3: Media planning**

- A. Develop a media plan for NYCEDC’s marketing efforts, including both traditional and digital channels
  - B. Conduct market research to identify the most effective channels for reaching NYCEDC’s target audience
  - C. Develop a budget for media spend, including recommendations for allocating funds across different channels
- Deliverable: finalized media plan with recommended channels and budget allocation

### **Task 4: Photo editing**

- A. Edit and retouch photos for use in marketing materials, including brochures, flyers, and other printed matter
- B. Ensure that all edited photos are consistent with NYCEDC’s brand guidelines

C. Provide guidance to any external vendors or partners involved in the photo editing process

Deliverable: final edited photos for use in marketing materials, social media, and other media as well

**Task 5: Animation**

A. Develop animated content for use in digital marketing materials, including web and social media content

B. Ensure that all animated content is consistent with NYCEDC's brand guidelines

C. Provide guidance to any external vendors or partners involved in the animation process

Deliverable: final animated content for use in digital marketing materials

**Task 6: Social media**

A. Develop a social media strategy for NYCEDC's marketing efforts

B. Create content for social media channels, including written content, graphics, and videos

C. Manage and monitor NYCEDC's social media channels, including responding to comments and messages

D. Manage and track metrics of social media

Deliverable: finalized social media strategy and content calendar, as well as ongoing management of social media channels and regular tracking reports of output

**Task 7: Account management**

A. Act as the primary point of contact for NYCEDC's marketing efforts

B. Provide regular updates and progress reports to NYCEDC's management team

C. Manage external vendors and partners involved in the marketing process

Deliverable: regular progress reports and ongoing management of external vendors and partners

**Task 8: Video production**

A. Develop video content for use in digital marketing materials, including web and social media content

B. Ensure that all video content is consistent with NYCEDC's brand guidelines

C. Provide guidance to any external vendors or partners involved in the video production process

Deliverable: final video content for use in digital marketing materials

**Task 9: Signage**

A. Design and layout signage for NYCEDC's properties

B. Ensure that all signage is consistent with NYCEDC's brand guidelines

C. Provide guidance to any external vendors or partners involved in the signage design and production process

Deliverable: final signage

**Task 10: Creation of marketing materials and experiential marketing events**

A. Develop marketing materials, including brochures, flyers, other printed matter, and experiential marketing event plans as needed

B. Ensure that all marketing materials and experiential marketing events are consistent with NYCEDC's brand guidelines

C. Provide guidance to any external vendors or partners involved in the marketing materials design and production process

Deliverable: final marketing materials for use in NYCEDC's marketing efforts and planning and facilitation of experiential marketing events

**Task 11: Advertising**

A. Develop content for use in digital, print, and out-of-home advertising outlets, including web and social media content

B. Ensure that all ad creative is consistent with NYCEDC's brand guidelines

C. Provide guidance to any external vendors or partners involved in the advertising production process

Deliverable: Advertising ads content for use in various platforms, as well as media spend plan and estimated costs

### III. PROPOSAL REQUIREMENTS

A. **Services to be Performed and Work Product.** The Consultant shall perform all work and services and deliver all of the Work Product specifically described in and required by the Scope of Services annexed as Appendix B in Part III of the Contract Draft. Prior to submitting your proposal, please be sure that you review and fully understand the Scope of Services.

#### B. **Staffing.**

1. **Personnel.** The Consultant shall, at its own expense, employ all personnel and retain all Subcontractors (including the subconsultants on the Consultant Team, if any) as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the Contract Term. The Consultant and its Subcontractors will be expected to cooperate fully with NYCEDC personnel. The respondent shall submit with its proposal resumes of its personnel and those of its Subcontractors who will perform the Services. The respondent, if selected, will be expected to use substantially the same personnel and Subcontractors described in the proposal to perform the Services. All personnel furnished by the Consultant as required under the Contract shall be employees or approved Subcontractors of the Consultant and not of NYCEDC or the City.

Each proposal must include:

- (a) Name, address, telephone number, and qualifications for each member of the Respondent team,
- (b) Background information on all members of the Respondent team, including the relevant experience of all principal members involved in the delivery of the Services, and
- (c) Any additional documentation or information evidencing the strength of the Respondent and its ability to deliver the Services. If applicable, this should include any past experience similar to the Services.
- (d) A schedule of all titles and hourly rates of staff to be utilized throughout the term of the proposed contract, substantially in the form of Appendix 6.

2. **Subcontractors.** If the Consultant is authorized under the Contract to enter into subcontracts for specialized services as required for performance of the Services, such authorization shall be subject to the prior written approval by NYCEDC of the Subcontractor (other than members of the Consultant Team which have been previously approved), the scope of services, compensation, and the principal responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not NYCEDC, will be responsible for the Subcontractor's work, acts and omissions. Respondents are directed to Article 4 of the Contract Draft for further information as to the requirements regarding subcontracting under the Contract.

3. **Person in Charge.** In its proposal, respondent shall identify the member of the respondent's staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services.

C. **Compensation.** Under the Contract, NYCEDC will agree to pay to the Consultant an amount not to exceed a Maximum Contract Price to be negotiated between NYCEDC and the Consultant

based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors. The Maximum Contract Price shall be payable as provided for in Sections 2.1 and 2.2 of the General Terms and Conditions (Part II) of the Contract and Appendix C (Part III of the Contract).

1. **Payments.** In order to receive payment for Services, the Consultant will be required to submit a Requisition setting forth in detail, for the period for which payment is requested, the Services actually rendered during that period and the amount of payment requested and due therefor. Requisitions may not be submitted more than once per month. All Requisitions shall be subject to NYCEDC's review, verification and approval, and all payments shall be conditioned upon NYCEDC's determination that all Services have been performed satisfactorily and in accordance with the terms of the Contract.

2. **Sales and Use Tax.** NYCEDC is exempt from state and local sales and use tax. SUCH TAX IS NOT TO BE INCLUDED IN PROPOSALS or in invoices submitted under the Contract. NYCEDC will provide the selected Consultant with an appropriate "sales and use tax exemption certificate".

D. **Statement of Agreement.** Respondent must provide a statement signed by an authorized principal or officer stating that the Respondent has read this RFP and the Appendices fully and agrees to the terms and conditions set forth herein and therein. See Appendix 2 for the form of the Statement of Agreement.

E. **Minority and Women-Owned Business Enterprise Program.** NYCEDC has adopted an M/WBE program to further participation by minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs", together with "MBEs" collectively referred to as "M/WBEs") in NYCEDC related projects. M/WBEs are certified by New York City Department of Small Business Services ("DSBS") in accordance with Section 1304 of the City Charter.

Respondents must submit a narrative to address M/WBE participation in the project during the work related to the RFP ("M/WBE Participation Narrative") in the form provided in Appendix 3. The target participation goal is 20–30%; the Operator(s) shall use good faith efforts to meet this M/WBE participation goal.

1. **Participation goal.** **The target Participation Goal for the Agreement is 20 – 30%.** This range reflects the minimum to the optimal Participation Goal for the work related to the RFP (the "Work"). The Participation Goal range represents a percentage of the hard costs and soft costs associated with the Work (the "Eligible Costs") that will be paid to contractors, subcontractors and supplier firms certified with the New York City Department of Small Business Services ("DSBS") as MBEs or WBEs. Respondents shall identify their Participation Goal in their M/WBE Participation Narrative. The Participation Goal may be calculated as follows:

(a) **Contractors:** The total dollar amount that Respondent pays to contractors certified with DSBS as MBEs or WBEs for Eligible Costs shall be credited toward fulfillment of the Participation Goal, provided that the value of such a contractor's participation shall be determined by subtracting from this total dollar amount any amounts that the contractor is obligated to pay to direct subcontractors or suppliers upon completion of such subcontractors or suppliers work or services.

(b) **Direct Subcontractors:** The total dollar amount that a contractor pays to subcontractors certified with DSBS as MBEs or WBEs for Eligible Costs shall be credited toward fulfillment of the Participation Goal, provided that the value of such a direct subcontractor's participation shall be determined by subtracting from this total dollar value any amounts that the direct subcontractor is obligated to pay to indirect subcontractors or suppliers upon completion of such indirect subcontractors or suppliers work or services.

(c) **Indirect Subcontractors:** The total dollar amount that a subcontractor pays to its subcontractors certified with DSBS as MBEs or WBEs for Eligible Costs shall be credited toward fulfillment of the Participation Goal.

(d) **Joint Ventures:** A contractor, direct subcontractor or indirect subcontractor that is a qualified joint venture, as defined in Section 6-129(c) (24), shall be permitted to count percentage of its own participation toward fulfillment of the Participation Goal. The value of such a contractor, direct subcontractor or indirect subcontractor's participation shall be determined by subtracting from this total dollar amount any amounts that the contractor, direct subcontractor or indirect subcontractor pays to subcontractors or suppliers, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an M/WBE partner is entitled pursuant to the joint venture agreement. If a contractor, direct subcontractor or indirect subcontractor claims credit for participation as a qualified joint venture, then upon Seller's/ request, Respondent must promptly provide a copy of the joint venture agreement for review and confirmation of the M/WBE partner's profit share as used in calculating credit toward fulfillment of the Participation Goal.

2. M/WBE certification. M/WBE firms must be certified by DSBS to credit such firms' participation toward attainment of the Participation Goal. Such certification must occur prior to the firms' commencement of work. A list of M/WBE firms may be obtained from the DSBS website at [www.nyc.gov/buycertified](http://www.nyc.gov/buycertified), by emailing DSBS at [buyer@sbs.nyc.gov](mailto:buyer@sbs.nyc.gov), by calling (212) 513-6356, or by visiting or writing DSBS at One Liberty Plaza, 14th Floor New York, NY 10006. Eligible firms that have not yet been certified may contact DSBS in order to seek certification by visiting [www.nyc.gov/getcertified](http://www.nyc.gov/getcertified), emailing [MWBE@sbs.nyc.gov](mailto:MWBE@sbs.nyc.gov), or calling the DSBS certification helpline at (212) 513-6311. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c) (20) of the Administrative Code of the City of New York.

3. M/WBE Proposal Submission Forms – M/WBE Participation Narrative. The Respondent must complete and submit as part of its proposal an M/WBE Participation Narrative setting forth the proposed Participation Goal, and a narrative related to Respondent's implementation of the proposed Participation Goal, including, but not limited to:

(a) Strategies and methods that will facilitate participation by M/WBE firms as contractors, subcontractors or suppliers consistent with Section I above, such as carve-outs and/or unbundling bid packages;

(b) Methods for identification of M/WBE firms seeking in connection with such development; and

(c) A statement that Respondent will make good faith efforts to meet the Participation Goal.

Respondent's M/WBE Participation Narrative will be ranked against that of other respondents and will be evaluated as an important part of the selection process, with focus on (i) the Respondent's Participation Goal in relation to the target Participation Goal range set forth in this RFP, and (ii) the development and quality of the M/WBE Participation Narrative.

If the Respondent's proposal is accepted, then the M/WBE Participation Narrative, as approved by NYCEDC, shall be annexed to and made part of the Contract. Respondent shall also submit a more comprehensive M/WBE Participation Plan. The M/WBE Participation Plan will include the Respondent's Participation Goal and include information on the percentage of work to be awarded to contractors and subcontractors, and the identity of all proposed M/WBE contractors, subcontractors and suppliers, as well as a description of the type and dollar value of work designated for participation by M/WBE firms.

**F. Wage Regulations and Requirements.**

1. Living Wage and Prevailing Wage. The Living Wage Act, as expanded by Executive Order No. 7 (collectively, the "Living Wage Requirements"), as well as the Prevailing Wage Law (collectively, the "Prevailing Wage Law"), all as hereinafter defined in Appendix 4, apply to certain companies that receive at least \$1 million of financial assistance from the City and/or NYCEDC. The Respondent will be subject to the Living Wage Requirements, and the Prevailing Wage Law, as applicable.

In addition, NYCEDC is committed to ensuring its projects meet wage goals set forth in the Living Wage Requirements and the Prevailing Wage Law, regardless of applicability. NYCEDC will give preference to Proposals in which Respondents demonstrate wages and benefits paid to all employees of the Respondent will meet or exceed the living wage and wages and benefits paid to building service employees at the Receiver Site will meet the prevailing wage.

Respondent's Proposal should include the proposed wages to be paid and supplemental benefits to be provided to employees of the Respondent who are expected to be employed at the Receiver Site.

Please be sure that you review and understand all of the Living Wage Requirements and the requirements of the Prevailing Wage Law to understand how these requirements will affect the project. Additional details are provided in Appendix 4.

Contractual provisions implementing the Living Wage Requirements and the requirements of the Prevailing Wage Law will be incorporated into the Transaction Agreements.

**G. Supplemental Requirements and Information.**

1. Doing Business Data Form Requirements. Pursuant to the City's Local Law No. 34 ("LL34"), 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 LL34. In order for the City to obtain information necessary to establish the required database, each respondent must complete a Doing Business Data Form in the form available at <https://edc.nyc/vendor-resources> and described in Appendix 1 and return as a separate attachment with the Respondent's proposal. The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions. Respondents are encouraged to consult legal counsel with respect to the impact of LL34. Respondents may also wish to review the document "Q&A: The Doing

Business Data Form and the Doing Business Database” available at the link provided above for further information. Note that responding to this RFP constitutes “doing business with the city” under LL34.

2. New York City Mayor’s Office of Contract Service’ Procurement and Sourcing Solutions Portal (“PASSPort”). The selected Respondent shall cooperate in supplying any information as may be required with respect to PASSPort and complete a vendor enrollment package (collectively, the “PASSPort Background Clearance Package”), which is available on the PASSPort website at <https://www1.nyc.gov/site/mocs/systems/about-go-to-passport.page> (the “PASSPort Website”), and any other government review and approval forms.



#### **IV. SELECTION CRITERIA**

There is no financial obligation by NYCEDC following the selection of an RFP proposal. NYCEDC will evaluate each proposal according to the criteria listed below, taking into account the information provided in the proposal and any other information about the Respondent and its performance available to NYCEDC. Proposals that are not complete or do not conform to the requirements of this RFP may not be considered.

NYCEDC reserves the right to request additional information, site visits, interviews, or presentations, from one or more of the Respondents.

- 40%** The respondent's and, as applicable, the proposed Consultant Team's experience in providing services similar to the Scope of Services described herein; the terms under which the respondent will commit its personnel and, as applicable, the personnel of the proposed Consultant Team members, without transfers and changes.
- 35%** The quality of the proposal and the degree to which it demonstrates the respondent's full understanding of and the ability to perform the Services to be rendered; the content of the proposal demonstrating the respondent's full understanding of the Project schedule and budget.
- 5%** The proposed fee and cost schedules
- 5%** The quality of the respondent's management, reputation, and references and, as applicable; the quality of the proposed Consultant Team; favorable history, if any, in contracting or doing business with the City and/or NYCEDC.
- 15%** The Respondent's proposed plans for encouraging participation by minority and women-owned business enterprises in connection with the Services including, as applicable, the respondent's M/W/DBE Subcontractors Participation Plan or M/WBE Narrative Form.

## V. SUBMISSIONS

### A. Submission Process Details.

1. Questions and Answers. Respondent(s) may submit questions and/or request clarifications from NYCEDC by submitting them to NYCEDC's email address [Marketingproperties2023@edc.nyc](mailto:Marketingproperties2023@edc.nyc), no later than 5:00 PM on **Monday, June 5, 2023**. Answers to questions will be posted at <https://edc.nyc/rfps> by **Monday, June 12, 2023**. Questions regarding the subject matter of this RFP will not be accepted after 5:00 PM on **June 5, 2023**, however, technical questions pertaining to downloading and submitting proposals to this RFP may be directed to [RFPrequest@edc.nyc](mailto:RFPrequest@edc.nyc) on or before **Tuesday, June 20, 2023**.

2. Submissions. Respondents should submit their proposals electronically pursuant to the instructions set forth on the project web page <https://edc.nyc/rfps> by **TUESDAY, JUNE 20, 2023, at 11:59pm EDT**. All Proposals should be labeled "***NYCEDC Properties Marketing Consultant RFP Response – [RESPONDENT NAME]***" and should be **uploaded as a single zip file with this title/respondent's name**. All submissions should be in searchable PDF format and should include the Sample Statement of Agreement attached as Appendix 2, as well as the M/WBE Narrative Form attached as Appendix 3 and a Doing Business Data Form from <https://edc.nyc/vendor-resources> (as more fully described in Appendix 1). Please allow sufficient time to submit. Proposals received after the indicated date and hour and/or received other than through the RFP website may not be considered.

In furtherance of and without limiting NYCEDC's rights as set forth in this RFP, non-compliant proposals may, in NYCEDC's sole discretion, be considered "not responsive" and may be rejected by NYCEDC including, without limitation, proposals that are not properly labeled and/or missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

3. Timeline. As previously stated above, NYCEDC expects the procurement process to following timeline:

- (a) RFP Release Date – **MAY 11, 2023**
- (b) Deadline for Questions Submission – **June 5, 2023**
- (c) Answers for Submitted Questions to be Posted Publicly on RFP website:  
– **June 12, 2023**
- (d) Submission Deadline – **JUNE 20, 2023**

B. Modifications. NYCEDC will advise Respondents of any modifications to this RFP by posting them on <https://edc.nyc/rfps>. Nothing stated at any time by any representative of NYCEDC or of any other entity shall affect a change in or constitute a modification to this RFP unless posted on the RFP website.

Respondents are reminded to check the RFP website periodically to view updated information and answers to questions posed by other Respondents.

While NYCEDC may send notices, addenda or other information related to this RFP to Respondents via e-mail alerts or otherwise in writing, such e-mail alerts and other written materials shall be considered courtesy copies only. In the event any conflict exists between any information set forth on the RFP website and any notice, addendum or other information provided to a Respondent by NYCEDC via e-mail or otherwise, the information set forth on the RFP website shall govern. NYCEDC is not obligated to provide the Respondent with any notices, addendum or other information that appears on the website in writing.

C. **Protest Procedures.** The procedures set forth in this section shall apply to all protests (collectively, “Protests” and each individually, a “Protest”) related to this procurement. NYCEDC will not entertain any Protest that is untimely or fails in any manner to comply fully with the procedures set forth in this section.

1. Types of Protests. There are three types of procurement Protests:

(a) Pre-Proposal Protest: A protest submitted prior to the Submission Deadline to challenge the notice procedures followed by NYCEDC.

(b) Pre-Award Protest: A protest submitted after the Submission Deadline but before Contract execution; and

(c) Post-Award Protest: A protest submitted after the Contract has been executed, but only to the extent that the protest is based on newly discovered information that was not available prior to execution of a Contract.

2. Submission of Protests/Deadlines. All Protests must be in writing and must be submitted in accordance with the following timeline for the following types of Protests:

(a) A Pre-Proposal Protest must be submitted at least two (2) business days prior to the Submission Deadline set forth in the section entitled **Submission Process Details** of this RFP;

(b) A Pre-award Protest must be submitted five (5) business days from the later of receipt of Notice of NYCEDC’s contingent award of the Contract and the date proposals are made publicly available; and

(c) A Post-award Protest must be submitted five (5) working days from the date the protesting party knew or should have known the newly discovered evidence that serves as the grounds of its Protest. Post-award Protest must be submitted five (5) working days from the date the protesting party knew or should have known the newly discovered evidence that serves as the grounds of its Protest.

A Protest will be considered submitted when the Protest is received by NYCEDC.

3. Contents of Protest. The Protest should include, without limitation, the following information:

(a) Name, address and telephone number of the protester;

(b) Appropriate identification of the procurement;

- (c) Statement of the basis of the Protest;
- (d) Supporting exhibits and documentary evidence to substantiate the grounds for the Protest; and
- (e) Form of relief requested.
- (f) Address for Submission of Protests:

NYCEDC  
1 Liberty Plaza  
New York, NY 10006  
Attention: Maryann Catalano, Chief Contracting Officer

4. Method of Submission.

- (a) By Hand or U.S. Mail
- (b) Envelope: The envelope enclosing the Protest must be clearly labeled “PROTEST” and must list the RFP to which the Protest relates.

5. Additional Information. NYCEDC may request that the protest or submit additional information that it may need in order to consider the Protest. Any additional information requested by NYCEDC must be submitted within the time period established by NYCEDC in order to expedite consideration of the Protest. Failure of the protester to comply with a request for information within the specified time period will result in a resolution of the Protest without consideration of any information subsequently submitted by the protester in an untimely manner.

6. Determinations. The President or his/her designee has the authority to make a final determination. NYCEDC will respond to each substantive issue in the Protest. NYCEDC may, in its sole discretion, meet with the protesting Operator and any affected party to discuss the Protest. NYCEDC shall have the right to take such appropriate action as may be in the best interests of NYCEDC and the City in light of the determination. NYCEDC’s determination shall be final. The Operator shall have been deemed to have received NYCEDC’s determination notice no later than five (5) days from the date of mailing or upon delivery, if delivered by hand of NYCEDC’s determination.

## VI. TERMS AND CONDITIONS

A. **Proposal as Offer to Contract.** Unless a specific exception is noted, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to execute the Contract substantially in the form annexed hereto as Appendix 4. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. The successful respondent shall cooperate in supplying any information as may be required with respect to the Background Clearance Package, which is available on the PASSPort website at <http://www1.nyc.gov/site/passport/index.page> (the "PASSPort Website"), and any other government review and approval forms. Respondent's proposal shall remain open for acceptance by NYCEDC and shall remain firm and binding upon the respondent for at least sixty (60) days after the date on which the proposals are received by NYCEDC, except that NYCEDC may by written notice to the respondent extend that date for an additional forty-five (45) days.

B. **News Releases.** Recipients of this RFP shall make no news or press release pertaining to this RFP or anything contained or referenced herein without prior written approval from NYCEDC. All news and press releases pertaining to this RFP must be made in coordination with NYCEDC.

C. **Investigations/Derogatory Information.** The respondent, the members of its Consultant Team, and all officers, principals, principal shareholders, partners and members thereof, if applicable, must complete a background questionnaire and shall be subject to investigation by NYCEDC and the City's Department of Investigation. The selection of a respondent may be rejected or revoked, or the Contract, if awarded, terminated for cause, in NYCEDC's sole discretion, in the event any materially derogatory information is revealed by such investigation or otherwise including, without limitation, that any such persons or any other persons substantially involved in the respondent's activities has committed any of the acts or omissions specified as the grounds for debarment in the City's Procurement Policy Board Rules.

D. **Freedom of Information Law.** All proposals submitted to NYCEDC in response to this RFP may be disclosed in accordance with the standards specified in the Freedom of Information Law, Article 6 of the Public Officers Law of the State of New York ("FOIL"). A respondent may provide in writing, at the time of its submission, a detailed description of the specific information contained in its submission which it has determined is a trade secret and which, if disclosed, would substantially harm such entity's competitive position. This characterization shall not be determinative, but will be considered by NYCEDC when evaluating the applicability of any exemptions in response to a FOIL request.

E. **Costs.** NYCEDC shall not be liable for any cost incurred by the respondent in the preparation of its proposal or for any work or services performed by the respondent prior to the execution and delivery of the Contract. NYCEDC is not obligated to pay any costs, expenses, damages or losses incurred by any respondent at any time unless NYCEDC has expressly agreed to do so in writing.

F. **NYCEDC Rights.** This is a "Request for Proposals" and not a "Request for Bids". NYCEDC shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, NYCEDC reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any respondents to this RFP, including, if the proposer is a joint venture, a copy of a joint venture agreement; award a contract to as many or as few or none of the respondents as NYCEDC may select; accept or reject any or all proposals received in response to this RFP; extend the deadline for

submission of proposals; negotiate or hold discussions with one or more of the respondents; permit the correction of deficient proposals that do not completely conform with this RFP; waive any conditions or modify any provisions of this RFP; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in NYCEDC's sole discretion. NYCEDC may exercise any such rights at any time, without notice to any respondent or other parties and without liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals become the property of NYCEDC.

G. **Applicable Law.** This RFP and any Contract, Subcontract or any other agreement resulting herefrom are subject to all applicable laws, rules, regulations and executive orders, policies, procedures and ordinances of all Federal, State and City authorities, as the same may be amended from time to time, including without limitation, equal employment opportunity laws.

**VII. DEFINITIONS**

None.

**VIII. APPENDICES**

Continues on next page.



## APPENDIX 1:

### LOCAL LAW 34 FORMS

The Consultant shall complete and submit a Doing Business Data Form which can be found at [www.nycedc.com](http://www.nycedc.com) in the following section:

“Resource/Vendor Resources”

If the Respondent cannot access or download these forms, NYCEDC may, upon request, send the Respondent the required forms. The text of said section provides as follows:

#### **Doing Business Accountability Project Forms**

Local Law 34 of 2007 (LL 34) requires the creation of a database containing information about entities that do business with the City as defined by the law, and principal officers, owners and senior managers of these entities. This information will be collected on Doing Business Data Forms that are distributed, collected and reviewed by agencies, and forwarded to the Doing Business Accountability Project (DBAP) at MOCS for processing. Collected data will be used to identify entities and people who are subject to LL 34’s limitations on campaign contributions in municipal elections.

The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions. Respondents are encouraged to consult legal counsel with respect to the impact of LL34. Respondents may also wish to review the document “Q&A: The Doing Business Data Form and the Doing Business Database” available at the Website and described in for further information. Note that responding to this RFP constitutes “doing business with the city” under LL34.

If you have any questions or concerns, please contact the Doing Business Accountability Project at 212-788-8104 or [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov).

[Doing Business Form](#)

[Doing Business Form-Real Property](#)

[Q&A General](#)

[Q&A Real Property](#)

**APPENDIX 2:**

**STATEMENT OF AGREEMENT**

**SAMPLE**

(On company letterhead)

Date:

New York City Economic Development Corporation  
1 Liberty Plaza  
New York, NY 10006  
Attn: Maryann Catalano, Chief Contracting Officer, Contracts

Dear Ms. Catalano:

This letter hereby certifies that [Respondent] has read this RFP and the Appendices fully and agrees to the terms and conditions set forth in this RFP and Appendices.

Sincerely,

Consultant

Consultant Title *[must be authorized principal or officer of the Respondent]*

**APPENDIX 3:**

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE NARRATIVE FORM**

**M/WBE Narrative Form**

NYCEDC is dedicated to furthering the participation of minority- and women-owned businesses in its work. Each RFP Respondent must submit this form together with its proposal to indicate how M/WBE participation will be achieved if it is selected.

Construction Manager/Lead Consultant:

Project Number:

**A. Establishment of numerical MWBE contracting utilization goals or targets**

*The Participation Goal Range for this contract is set in Section III.E of the RFP. Please indicate the goal you commit to reaching on this contract by entering your M/WBE Participation Commitment Percentage below Please note, if you are selected this goal will become part of your contract.*

MWBE Participation Commitment Percentage\*:

\*M/WBE Participation Commitment Percentage = Projected Payments to MWBEs/Total Contract Payments

**B. Prequalified list information (Construction Management contracts only)**

**What is the size of your list of prequalified subcontractors?**

**How many M/WBE's are on your list of prequalified subcontractors?**

**Please fill out table below so that we may determine how well M/WBEs represented on your prequalified list for trades that are key to this project.**

	<b>1. Trade</b>	<b>2. No. of Prequalified Contractors/Consultants for Trade</b>	<b>3. No. of Firms in Previous Column (#2) that is M/WBE</b>
Key Trade #1			
Key Trade #2			
Key Trade #3			
Key Trade #4			
Key Trade #5			

**C. List of Subcontractors (Retainers, On-Call and CM contracts)**

*Please separately attach the Subcontractors Participation Plan (SPP) listing all subcontractors, both M/WBE and non-M/WBE, that will be used on this contract. For CMs, list all the members of the team included in proposal. The SPP will be reviewed and rated based on:*

- *Percentage of subcontractors who are certified as M/WBE with the appropriate agency*
- *Number of M/WBE firms on the SPP*
- *Type of work M/WBE firms will provide—Are they critical tasks integral to the project? Are they providing support services? Are there multiple firms on the SPP for a task that an MWBE is slated to provide?*

**D. Strategies and methods that will facilitate participation by M/WBE firms**

*Please separately attach a narrative that lists the specific measures that will be taken to fulfill the M/WBE requirements of this contract and the goals established. Below are some recommended methods for engaging M/WBE firms. In the narrative, be sure to indicate which of the methods will be incorporated into your M/WBE outreach efforts as well as any additional strategies. These strategies should be specific and easily verifiable. Also include detailed information about any MWBE programming offered by your firm. Note that specific actions committed to in the narrative must be documented sufficiently so that proof of their application can be readily obtained. As this narrative will be a factor in selection, it is critical that consultants fulfill every aspect of the narrative set forth in the response to the RFP.*

- Advertise opportunities for M/WBEs
- Hold direct subcontractors accountable to meeting Participation Goals
- Engage in direct outreach to M/WBEs
- Hold informational meetings with M/WBEs
- Work with M/WBE and community organizations to enhance outreach
- Reach out to vendors on the NYCEDC Interested Subcontractor List
- Seek assistance from NYCEDC Opportunity M/W/DBE staff
- Carve out specific work for M/WBE contractors
- Unbundle bid packages to engage more subcontractors

**E. Provide the name and contact information of in-house M/WBE contact.**

**F. Attestation**

I acknowledge that all the information provided herein is true and correct. In addition, I confirm the following:

- I have read and understand the M/WBE requirements for this contract.
- I will make and thoroughly document Good Faith Efforts utilized in encouraging M/WBE participation.

- I understand that I must notify NYCEDC of any material changes to the information submitted herein.

X \_\_\_\_\_  
Authorized Person

\_\_\_\_\_  
Officer's Name and Title

\_\_\_\_\_  
Date

## APPENDIX 4:

### LIVING WAGE AND PREVAILING WAGE REQUIREMENTS

The living wage and prevailing wage laws and regulations described below help guarantee that City development efforts encourage the creation of jobs that provide economic opportunity and benefit for all New Yorkers while serving as models to employers across the City. Local Law No. 37 of 2012 added the Fair Wages for New Yorkers Act as Section 6-134 of the New York City Administrative Code (the “Living Wage Act”), which was broadened when the Mayor issued Executive Order No. 7 (the “Executive Order,” the obligations imposed on a successful Respondent pursuant to the Living Wage Act and the Executive Order are collectively referred to as the “Living Wage Requirements”). The Living Wage Requirements require companies that receive at least \$1 million of “financial assistance” (as such term is defined in the Living Wage Act) from the City or NYCEDC to pay their employees at the project site no less than a “living wage,” unless the company qualifies for an exemption under the Living Wage Requirements. As of April 1, 2023, the “living wage” is equal to the sum of \$15.00 per hour with health benefits or \$17.15 per hour without health benefits, subject to annual inflation based adjustments (the Commissioner of the Department of Consumer Affairs will announce the new rates each January 1, which will go into effect on April 1 of each such year). Additionally, other “additional covered employers” (as such term is defined in the Executive Order) at the project site are required to pay their employees at the project site no less than a living wage, unless those employers qualify for an exemption under the Living Wage Requirements. Copies of the Living Wage Act and the Executive Order are available for download at <https://www.nycedc.com/about-nycedc/economic-workforce-opportunity>.

Local Law No. 27 of 2012 added Section 6-130 of the New York City Administrative Code (the “Prevailing Wage Law”). Like the Living Wage Requirements, the Prevailing Wage Law applies to certain companies that receive at least \$1 million of “financial assistance” (as such term is defined in the Prevailing Wage Law) from the City or NYCEDC for projects that are expected to be larger than 100,000 square feet or to include more than 100 residential units, unless the company and/or project qualifies for an exemption under the Prevailing Wage Law (a nonexempt company is referred to as a “covered developer”). A covered developer must ensure that all “building service employees” performing “building service work” (as such terms are defined in the Prevailing Wage Law) at the project location are paid no less than the “prevailing wage.” The “prevailing wage” means the rate of wage and supplemental benefits paid to workers in the same trade or occupation in the New York City locality, as determined annually by the City Comptroller. The current prevailing wage schedule is available for download at <http://comptroller.nyc.gov/general-information/prevailing-wage/>.

A copy of the Prevailing Wage Law is available for download at <https://www.nycedc.com/about-nycedc/economic-workforce-opportunity>.

**APPENDIX 5:**

**CONSULTANT CONTRACT DRAFT**

*Separate attachment.*

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**[INSERT PROJECT NAME]**  
**PROFESSIONAL SERVICES CONSULTANT CONTRACT**  
**FOR THE PROVISION OF [INSERT TYPE OF SERVICES] SERVICES**  
**NYCEDC CONTRACT NO. [INSERT CONTRACT NO.]**  
**PROJECT CODE NO. [INSERT PROJECT CODE]**

# ***CONSULTANT CONTRACT***



**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**[INSERT PROJECT NAME]**  
**PROFESSIONAL SERVICES CONSULTANT CONTRACT**  
**FOR THE PROVISION OF [INSERT TYPE OF SERVICES] SERVICES**  
**NYCEDC CONTRACT NO. [INSERT CONTRACT NO.]**  
**PROJECT CODE NO. [INSERT PROJECT CODE]**

**PART I      SPECIFIC TERMS AND CONDITIONS**

**PART II     GENERAL TERMS AND CONDITIONS**

**PART III    APPENDICES**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**[INSERT PROJECT NAME]**  
**PROFESSIONAL SERVICES CONSULTANT CONTRACT**  
**FOR THE PROVISION OF [INSERT TYPE OF SERVICES] SERVICES**  
**NYCEDC CONTRACT NO. [INSERT CONTRACT NO.]**  
**PROJECT CODE NO. [INSERT PROJECT CODE]**

**PART I**  
**SPECIFIC TERMS AND CONDITIONS**

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

**1. The Contract**

- 1.1 **Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
- 1.2 **Contract No.** [\_\_\_\_\_]
- 1.3 **Contract Effective Date:** [\_\_\_\_\_]
- 1.4 **Services Commencement Date:** [\_\_\_\_\_]
- 1.5 **Term:** [\_\_\_\_\_]
- 1.6 **Maximum Contract Price:** [\_\_\_\_\_]
- 1.7 **Project:** [\_\_\_\_\_]
- 1.8 **Project Site:** [\_\_\_\_\_]
- 1.9 **M/WBE Participation Goal:** \_\_\_\_\_% [**IF NONE, INSERT “NOT APPLICABLE”**]

**2. Parties**

- 2.1 **The Corporation:** New York City Economic Development Corporation, a not-for-profit corporation, organized under the laws of the State of New York.
- 2.2 **Director:** [**INSERT NAME OF APPROPRIATE SVP OR EVP**]
- 2.3 **The Consultant:** [\_\_\_\_\_], a [**INSERT STATE CONSULTANT WAS ORGANIZED AND TYPE OF BUSINESS ENTITY, e.g. a New York corporation (or partnership, LLP or LLC)**], having an office at:

[ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ ]

[FEDERAL TAX ID# \_\_\_\_\_ ]

2.4 **Principal:** [INSERT NAME OF CONSULTANT’S MOST SENIOR OFFICER RESPONSIBLE FOR THE PERFORMANCE OF THE SERVICES]

2.5 **Person in Charge:** [INSERT NAME OF THE MEMBER OF THE CONSULTANT’S PROFESSIONAL STAFF WHO WILL HAVE PRIMARY RESPONSIBILITY TO PERFORM AND/OR SUPERVISE AND COORDINATE PERFORMANCE OF THE SERVICES]

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**

New York City Economic Development Corporation  
1 Liberty Plaza  
New York, NY 10006  
Attn: General Counsel

with a copy to:

New York City Economic Development Corporation  
1 Liberty Plaza  
New York, NY 10006  
Attn: [NAME: \_\_\_\_\_ ]

3.2 **Notices to the Consultant:**

[NAME: \_\_\_\_\_ ]

[ADDRESS: \_\_\_\_\_  
\_\_\_\_\_ ]

Attn: [NAME: \_\_\_\_\_ ]

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

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

**NEW YORK CITY ECONOMIC  
DEVELOPMENT CORPORATION**

**[INSERT CONSULTANT NAME]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**[INSERT PROJECT NAME]**  
**PROFESSIONAL SERVICES CONSULTANT CONTRACT**  
**FOR THE PROVISION OF [INSERT TYPE OF SERVICES] SERVICES**  
**NYCEDC CONTRACT NO. [INSERT CONTRACT NO.]**  
**PROJECT CODE NO. [INSERT PROJECT CODE]**

**PART II**  
**GENERAL TERMS AND CONDITIONS**

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ARTICLE 2 COMPENSATION .....4  
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ARTICLE 4 PERSONNEL AND SUBCONTRACTORS .....8  
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**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**[INSERT PROJECT NAME]**  
**PROFESSIONAL SERVICES CONSULTANT CONTRACT**  
**FOR THE PROVISION OF [INSERT TYPE OF SERVICES] SERVICES**  
**NYCEDC CONTRACT NO. [INSERT CONTRACT NO.]**  
**PROJECT CODE NO. [INSERT PROJECT CODE]**

**PART II**  
**GENERAL TERMS AND CONDITIONS**

The Corporation and the Consultant agree as follows:

**ARTICLE 1**  
**PERFORMANCE OF SERVICES**

1.1 Services. The Corporation hereby retains and engages the Consultant and the Consultant agrees to perform the Services as described in **Appendix B** (Scope of Services), attached hereto.

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

1.2.1 The Consultant shall commence the Services upon or promptly after the Services Commencement Date and shall complete the Services and each phase of the Services within the time or times stated for Final Completion as set forth in **Appendix B**, and in accordance with any directive given and Progress Schedule approved by the Corporation, unless this Contract is earlier terminated pursuant to Article 3 hereof.

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

1.2.3 If the Consultant has been delayed and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefor, the Consultant may be granted an extension of time fixed for performance equal to the period the Consultant was actually and necessarily delayed upon submission of evidence of the causes of the delay, subject to the written approval of the Director in his or her sole discretion. The decision of the Director as to the granting of the extension and its length shall be binding upon the Consultant.

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

1.3 Complete Work and Timing and Sequence/Meetings. It is the intent of the parties that the provisions of this Contract shall not be construed so as to limit the Services, but that the

Services shall include all acts necessary to fully and finally complete the work described in **Appendix B** hereof. The Consultant shall schedule and perform the Services in a manner so as to permit their completion diligently and expeditiously. The Principal, the Person in Charge and such other Representatives of the Consultant as may be required under the circumstances shall be available to meet with the Director or her or his designee as often as necessary to effectively perform the Services, and as often as may be specified in **Appendix B**.

#### 1.4 Authority of Director/Performance of Services.

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

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

#### 1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services without prior written authorization from the Director. The Consultant shall revise or correct any Work Product submitted in accordance with this Contract until accepted by the Director and accepted by all agencies whose approval is required by law, without additional compensation or time extension. Any changes to the performance of the Services or the Work Product which are necessary due to improper performance of the Services, a defect of design, unworkability of details or other fault or error of the Consultant shall be made by the Consultant, also without additional compensation or time extension.

1.5.2 The Director shall have the right to alter the Services, provided however, that if the Consultant believes that any work or services that it has been directed to perform as a result of such alteration is beyond the Scope of Services and constitutes Extra Work, the Consultant shall so Notify the Director within three (3) days of such directive. The Director shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work requiring an amendment to the Scope of Services and the Contract. The Director's determination shall be final, binding and conclusive.

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

from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

## 1.6 Equipment.

1.6.1 The Consultant, at its own expense, shall secure all supplies, materials and equipment required to perform and complete the Services.

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

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

1.6.4 The Consultant shall be solely responsible for the means and methods and the safety and protection of all its employees and shall assume all liability for injuries, including death, that may occur to such employees due to the act, omission, negligence, fault or default of the Consultant.

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

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

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

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



## **ARTICLE 2** **COMPENSATION**

### 2.1 Payments.

2.1.1 Subject to, and in accordance with this Article 2, the Corporation shall pay to the Consultant, and the Consultant agrees to accept, in full consideration for the Services, and for all expenses of the Consultant in connection therewith, including Subcontractors' Costs, an amount not to exceed the Maximum Contract Price, payable as provided for in this Section 2.1 and in Appendix C.

2.1.2 Requisitions shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.5 and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

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

2.1.4 The Director shall review the Requisitions and the Work Product. If, in her or his judgment, the Services have been satisfactorily performed in accordance with this Contract, the Director will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.5 Subject to Section 3.5, Final Payment will be due only upon Final Completion.

2.1.6 The Consultant, with the Director's prior approval, may exceed the Maximum Payment allocated to a particular Portion of the Services if the Consultant by Notice determines that the Maximum Payment initially allocated to the Portion is insufficient to adequately perform the Portion of the Services and if the Consultant demonstrates to the Director a savings with respect to another Portion of the Services which is at least equal to the amount of such excess. However, notwithstanding the above, in no event shall the Corporation pay the Consultant more than the Maximum Contract Price.

2.1.7 All Requisitions must be submitted to the Corporation's Accounts Payable Department.

### 2.2 Miscellaneous Payment Provisions.

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

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

(ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract,

then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

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

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

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

2.3 Electronic Funds Transfers. All payments due under this Contract in excess of \$100,000 shall be made by Electronic Funds Transfer ("EFT"). Upon execution of this Contract, and in no event later than its submission of its first Requisition, the Consultant shall complete and submit to the Corporation the "EFT Vendor Payment Enrollment Form" annexed to Appendix C. The Consultant shall update such information to the extent necessary for EFT payments to be made. The Corporation shall not be obligated to make any payment in excess of \$100,000 unless such information is provided and shall be entitled to rely solely on the information provided by the Consultant. Payments to the Corporation shall be made by check unless the Corporation Notifies the Consultant to make payments by EFT.

### **ARTICLE 3**

#### **SUSPENSION OR TERMINATION**

#### 3.1 Delay, Postponement or Suspension of Work.

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

3.1.2 Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the Corporation or the City, but the Term specified in Part I of this Contract and the Consultant's time for performance of the Services shall be extended for the period of the delay, postponement or suspension.

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

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

3.3 Defaults and Termination for Cause.

3.3.1 In addition to any other right that the Corporation may have, upon the occurrence of an Event of Default, the Corporation shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving Notice to the Consultant of the cause and the date of such termination.

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

- (i) The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;
  - (ii) The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;
  - (iii) The Consultant materially violates any term, covenant or provision of this Contract;
  - (iv) The Consultant materially fails to comply with any Applicable Requirements or any Applicable Agreements;
  - (v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;
  - (vi) The Consultant becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;
  - (vii) The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;
  - (viii) The Consultant fails to comply with the M/WBE Requirements in Article 9;
- or
- (ix) The Consultant or any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

3.4.1 The Contract, or such portion of the Contract described in the Notice of termination, shall terminate as of the termination date set forth in the Notice given pursuant to Section 3.3.1, or immediately if no date is specified.

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

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

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

### 3.5 Payment Upon Termination.

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

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

3.5.3 If the termination was for cause, the Consultant shall receive such equitable compensation for such Services as shall, in the judgment of Director, have been satisfactorily performed by the Consultant up to the date of the termination, such compensation to be fixed by the Corporation, subject to any rights of audit provided herein, and subject to set-off by the Corporation for any additional expenses the Corporation incurs to complete the Project satisfactorily, including the expenses of engaging another consultant and the costs set forth in Section 9.10(ii). The sum of (i) such additional expenses incurred to the Corporation for the completion of the Project, and (ii) payments made to the Consultant prior to the termination of the Contract shall hereafter be referred to as the "Contract Completion Costs".

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

(ii) If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the

difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

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

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

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

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

#### **ARTICLE 4**

#### **PERSONNEL AND SUBCONTRACTORS**

##### 4.1 Personnel.

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of the Corporation including, without limitation, the Director, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

4.1.2 The Consultant shall submit to the Director, prior to performance of Services by such personnel, resumes of the Consultant's personnel and those of its Subcontractors' personnel who will perform the Services. The experience and training of such personnel is a material inducement for the Corporation to enter into this Contract and make payment for the Services.

The Consultant and its Subcontractors are expected to use such personnel to perform the Services. If the Consultant or a Subcontractor proposes to substitute any other personnel for those heretofore identified, it shall assign persons with equivalent or better experience and training and shall submit the resumes of such proposed substitute personnel to the Director and obtain the Director's prior approval of the substitution. Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract shall be employees of the Consultant or approved Subcontractors of the Consultant and not employees or subcontractors of the Corporation or the City.

#### 4.2 Subcontractors.

4.2.1 The Consultant is authorized to enter into subcontracts for specialized professional services as required for performance of the Services subject to the prior written approval of the Director as to the Subcontractor, the scope of services, compensation, and the Principal or other member(s) of the Consultant's staff responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not the Corporation, is responsible for the Subcontractor's work, acts and omissions.

4.2.2 The Consultant shall pay any Subcontractors approved by the Corporation for work that has been satisfactorily performed no later than thirty (30) days from the date of Consultant's receipt of payments from the Corporation.

4.2.3 The Consultant is solely responsible for the payments to the Subcontractors. Upon receipt of evidence of Consultant default hereunder with respect to its obligations to make payments to its Subcontractors, the Corporation reserves the right, after three (3) calendar days prior Notice, to retain any money due the Consultant and pay directly for labor, materials, equipment, Services and all other obligations of the Consultant and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Consultant.

4.2.4 The Consultant shall inform all Subcontractors fully of the terms and conditions of this Contract. All subcontracts shall provide that:

- (i) there is no privity of contract between the Subcontractor and the Corporation or the City;
- (ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;
- (iii) the Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;
- (iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1.3;
- (v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

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

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

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

4.2.5 The Consultant shall provide the Corporation with a list of all Subcontractors employed for the performance of the Services whose subcontract amount totals \$25,000 or more. The Consultant will furnish each such Subcontractor whose Subcontract amount totals less than \$100,000 with the Corporation's internal qualification and background investigation forms. The Consultant will furnish each such subcontractor whose subcontract amount totals \$100,000 or more with the Mayor's Office of Contracts Investigations Forms. These forms will be provided by the Corporation to the Consultant. The Consultant shall cause each such Subcontractor to fill out and complete the forms in a timely fashion but in no event later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

4.3 Person in Charge. The Consultant has designated a Person-in-Charge who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the Director. Failure to make such person(s) available to the extent necessary to perform the Services skillfully and promptly shall be a material violation of the terms of this Contract.

## **ARTICLE 5** **DOCUMENTS AND MATERIALS**

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

- (i) approved in writing by the Director before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;
- (ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and
- (iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all

formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

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

5.2.3 The Work Product shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the Corporation is the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Work Product does not qualify as a "work-made-for-hire", the Consultant hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Work Product to the Corporation, free and clear of any liens, claims or other encumbrances. The Consultant shall retain no copyright or other intellectual property interest in the Work Product.

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

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

- (i) shall be wholly original material not published elsewhere;
- (ii) shall not violate any copyright, trademark or other applicable law; and
- (iii) shall not, to the best of Consultant's knowledge, constitute a defamation or invasion of the right of privacy or publicity, or an infringement of any kind, of any rights of any third party.

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

- (i) all information as to any durational limitations on use;
- (ii) any requirement that a notice be displayed in connection with display, including the specific owner of the rights to be credited, and any limitation on the use under the Consultant's license; and
- (iii) a statement certified by the Principal verifying the foregoing in the form annexed hereto as Appendix D.



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

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

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

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

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

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

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

### 5.3 Confidential Information.

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

- (i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- (ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- (iii) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and

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

5.3.2 Consultant represents that it has adequate safeguards and procedures to protect the confidentiality of records and information and to limit dissemination only to authorized employees as necessary for the performance of the Services. All Confidential Information provided to Consultant shall remain the property of the Corporation.

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

## **ARTICLE 6**

### **INDEMNIFICATION, CLAIMS AND INSURANCE**

#### **6.1 Indemnification of the Corporation and the City.**

6.1.1 The Consultant shall indemnify, defend and hold harmless the Corporation and the City, their agents and employees from any and all claims, judgments or liabilities to which they may be subject because of any negligence or any fault or default of the Consultant, its agents, employees or subcontractors or the breach of the Consultant's obligations under the Contract.

6.1.2 The Consultant shall be solely responsible for all injuries to persons, including death, or damage to property sustained during its operations and work under this Contract resulting from any negligence, fault or default of the Consultant or of its employees, authorized agents, servants, independent contractors or subcontractors retained by the Consultant pursuant to this Contract. The Consultant agrees to indemnify, defend and hold the Corporation and the City harmless from any liability upon any and all claims for injuries to persons (including death) and damage to property on account of negligence, fault or default of the Consultant, its employees, authorized agents, servants, independent contractors and subcontractors retained by the Consultant.

#### **6.2 Claims or Actions Against the Corporation.**

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

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from

any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

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

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

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

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

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

### 6.3 Insurance.

6.3.1 At all times during the performance of the work or Services in connection with this Contract or for such other time periods as the Corporation may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in this Section 6.3 and the annexed Appendix E, as may be applicable and as may be required by the Corporation.

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

- (i) are acceptable to the Corporation;
- (ii) are rated A-:VII or better by A.M. Best Company; and
- (iii) are licensed to issue such insurance by the New York State Department of

Insurance.

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

- (i) be in form and substance satisfactory to the Corporation;
- (ii) be in the minimum face policy amounts set forth in Appendix E;
- (iii) list all individuals and entities identified in Appendix E as Additional Insureds except in the case of any workers' compensation, automobile liability and professional liability policies required to be maintained hereunder;
- (iv) include a waiver of the right of subrogation with respect to all additional insureds named therein as well as the required Workers' Compensation coverage; and

(v) contain the provisions set forth in Appendix E.

6.3.4 Coverage for the individuals and entities identified in Appendix E as Additional Insureds shall be written into those policies set forth in Section 6.3.3 above as an endorsement at least as broad as ISO Form CG 20 10 (07/04 ed.).

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

6.3.6 The Consultant shall require that each of its Subcontractors, prior to the commencement of their work, purchase and maintain, or be covered by, at no cost or expense to the Corporation or the City, the same types and amounts of insurance and meet all of the same requirements as required of the Consultant as set forth in this Article 6 and Appendix E. The Consultant hereby covenants and warrants that its Subcontractors shall purchase and maintain the policies required by this Section in the amounts and for the periods required by this Section.

6.3.7 Prior to the commencement of the Services the Consultant shall forward to the Corporation's Contract Administration and Procurement Department at least three (3) original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Appendix E. The Consultant shall also provide an original certificate of insurance to each of the Additional Insureds.

6.3.8 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder no less than five (5) days prior to the expiration of any such policy.

6.3.9 Unless otherwise agreed to in writing by the Corporation, the types of insurance to be purchased and maintained by the Consultant and its Subcontractors are as follows:

(i) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation, disability benefits insurance in statutory amounts, and employer's liability insurance in the amounts set forth in Appendix E, for all of its employees engaged in the Services. The failure of the Consultant to comply with this Section 6.3.9(i) shall make this Contract voidable at the option of the Corporation.

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The commercial general liability insurance policy must also include products and completed operations coverage, which shall include a provision that coverage will extend for a period of at least twelve (12) months from the date of final completion and acceptance by the Corporation of all of the Services. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as the most current ISO Form CG 00 01. The additional insured protection must be as broad as coverage that would be afforded through use of ISO Forms CG 20 26, CG 20 33 and CG 20 37. The liability

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

(iii) Automobile Liability Insurance. The Consultant shall purchase and maintain automobile liability insurance covering all automobiles used in connection with the work or Services under this Contract whether owned, non-owned and/or hired automobiles.

(iv) Umbrella/Excess Liability Coverage. If the Consultant purchases or maintains umbrella/excess liability insurance, such insurance should specifically list the Consultant's commercial general liability, comprehensive automobile liability and employer's liability as primary coverages, to protect the Corporation, the City, the Additional Insureds, the Consultant and its Subcontractors from any and all claims in excess of the underlying policy limits for such primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.9(iv) is on a "per occurrence" basis and an aggregate basis.

(v) If applicable, any additional policies as may be described in Appendix E.

6.3.10 As a condition precedent to payment of any amounts owing to the Consultant by the Corporation, the Consultant shall, unless otherwise expressly agreed to in writing by the Corporation, provide to the Corporation the original certificates of insurance required under this Contract and shall on demand provide true copies of policies and endorsements to policies showing compliance with the insurance requirements set forth in this Article 6 and Appendix E.

6.3.11 The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in Section 6.3.3 (iii) above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Corporation, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same.

6.3.12 The insurance provisions of this Article 6 shall be in addition to any rights that the Corporation, the City and the Additional Insureds may have under any hold harmless and indemnification provisions of this Contract and any other right provided by this Contract or by law. The Consultant shall not violate or permit to be violated any term or condition of the policies.

6.3.13 The Commercial General Liability and Umbrella Excess Liability Coverage policies must be endorsed to show that these primary and/or excess policies are to be considered primary and non-contributory. In addition, the Commercial General Liability and Umbrella/Excess Liability Coverage policies must provide that (i) the Additional Insured

protection afforded under the Consultant's policies shall be primary and not on an excess or contributing basis with any policies which may be available to the Corporation, and (ii) that the Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available.

6.3.14 In order to ensure vertical erosion of liability limits provided by the Consultant under this Contract, the Consultant agrees to permit the Corporation's staff and/or the Corporation's insurance consultants to review the Consultant's liability policy language for all liability policies and to endorse those policies to clarify the hierarchy of policies in the event of a claim.

## **ARTICLE 7**

### **REPRESENTATIONS AND WARRANTIES**

The Consultant represents and warrants that:

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

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

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

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

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

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The

Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

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

## **ARTICLE 8**

### **APPLICABLE LAWS, RULES AND REGULATIONS**

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

8.1.1 If the Corporation initiates any action against the Consultant in Federal Court or in New York State Court, service of process may be made on the Consultant in person, wherever the Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Contract, or to such other address as the Consultant shall have provided to the Corporation in writing.

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

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

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

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so

inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

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

8.4 Equal Employment Opportunity/Employment Reports.

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

8.4.2 The Consultant covenants that it shall complete and submit and shall require all Subcontractors to complete and submit Employment Reports (as required by E.O. 50) to the Corporation which can be found at in the section identified in Appendix G. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

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

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

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

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



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

8.7 Sales and Use Tax.

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

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

8.8 Whistleblowers.

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

8.8.1.1 The Consultant shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee of the Consultant or any of its Subcontractors to (i) the Corporation, (ii) the City's Department of Investigation, (iii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iv) the City Chief Procurement Officer, DSBS Chief Contracting Officer ("DSBS ACCO") or DSBS Commissioner.

8.8.1.2 If any of the Consultant's officers or employees believes that s/he or has been the subject of an adverse personnel action in violation of paragraph 8.8.1.1 above, s/he shall be entitled to bring a cause of action against the Consultant to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the 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. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the DSBS ACCO or DSBS Commissioner of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the City, any public agency or other public entity, or the Corporation, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

8.8.2 In accordance with Section 6-132 of the Administrative Code, the Consultant shall post a notice in the form annexed hereto at Exhibit L

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

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

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

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

8.12 Doing Business Data Form Requirements.

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

8.12.2 The Consultant shall complete and submit a Doing Business Data Form which can be found at . If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

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

## **ARTICLE 9**

### **M/WBE REQUIREMENTS**

9.1 M/WBE Program. Local Law No. 129 of 2005 added and Local Law 1 of 2013 amended Section 6-129 of the Administrative Code of the City of New York (hereinafter “Section 6-129”). Section 6-129 establishes a program for participation in City procurement by minority-owned business enterprises and women-owned business enterprises (collectively referred to as “M/WBEs”), certified in accordance with Section 1304 of the City Charter. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City’s procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business and lowering contract costs. The Corporation endorses these goals and has adopted an M/WBE Program to further participation by M/WBEs in the provision of the Services. All Consultants shall comply with all requirements of the Corporation’s M/WBE Program applicable to this Contract.

9.2 Minority and Women -Owned Business Enterprises. M/WBE firms must be certified by DSBS to credit such firms' participation toward attainment of the Participation Goals. Such certification must occur prior to the firms' commencement of work.

9.3 Participation Goal.

9.3.1 The Participation Goal for this Contract is set forth in Part I, Section 1.12. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS as M/WBEs, and/or by crediting the participation of the Consultant.

9.3.2 The Participation Goal is a material term of the Contract and the Consultant shall be subject to the Participation Goal.

9.3.3 A consultant that is an M/WBE shall be permitted to count its own participation toward fulfillment of the Participation Goal, provided that the value of the Consultant's participation shall be determined by subtracting from the total value of the Contract any amounts that the Consultant pays to direct Subcontractors. A Consultant may not subcontract more than 50% of the total value of the Contract unless it working under a retainer contract or a construction management contract. The value of an M/WBE Consultant's participation shall be determined by subtracting from the total value of the Contract any amounts that the respondent will pay to direct Subcontractors. If the Consultant is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DSBS as M/WBEs.

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

9.4 M/WBE Narrative /Subcontractors Participation Plan.

9.4.1 The M/WBE Narrative, Subcontractors Participation Plan and applicable forms for this Contract are attached hereto as Appendix H. If this is a retainer, the Consultant shall submit a Subcontractor Participation Plan on a task by task basis as required.

9.4.2 Subcontractors Participation Plan for this Contract is annexed hereto as Appendix H.

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

9.5 M/WBE Compliance Reports.

9.5.1 The Consultant shall provide the Corporation with written statements (“M/WBE Compliance Reports”), certified under penalty of perjury, reporting the status of the Consultant’s compliance with its M/WBE Subcontractor Participation Plan as set forth in this Section 9.5.

9.5.2 The Consultant shall submit a M/WBE Compliance Report to the Corporation:

- (i) with each Requisition for payment; and/or
- (ii) on a periodic basis as the Corporation may require.

9.5.3 Each M/WBE Compliance Report shall set forth the following for the period covered by the report:

- (i) the total amount paid to Subcontractors (including Subcontractors that are not M/WBEs);
- (ii) the names, addresses and contact numbers of each MBE or WBE hired as a Subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE.

9.5.4 In addition to the foregoing, the Consultant shall submit a final, cumulative M/WBE Compliance Report to the Corporation with its Requisition for Final Payment. The Consultant shall set forth in such final report the information required by Section 9.5.3 in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

9.6 Subcontractor Payment Tracking. The Corporation requires contractors and consultants to track subcontractor award and payment information online through the Compliance Tracking System (CTS). Prime Contractors and Consultants are responsible for entering contact and award information on all subcontractors associated with the project, and ensuring that any direct subcontractors do the same for second-tier subcontractors they are using on the project. When Prime Consultants/Contractors receive payments from the Corporation, they will receive a system-generated notification prompting them to access CTS and enter information on how much of that payment was retained and the amounts paid to each subcontractor, along with dates of payment. Prime Consultants/Contractors have seven days from receipt of this notification to enter the required information in the CTS. In addition, any changes to subcontractors and award amounts must be tracked in this system.

The compliance tracking system can be accessed by following this link:  
<https://nycedc.mwdb.com/>

9.7 Change Orders. If the Consultant requests a change order having a value that exceeds ten percent (10%) of the Contract, the Corporation will establish an M/WBE participation goal for the work to be performed pursuant to the change order.

9.8 Modification of the Consultant’s Subcontractors Participation Plan.

9.8.1 The Consultant may request modification of its Subcontractors Participation Plan after the award of the Contract. The Corporation may grant such request if it determines that the Consultant has established, with appropriate documentary and other evidence, that the

Consultant has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract.

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

9.8.2.1 Direct Outreach. The Consultant provided timely notice to M/WBEs of specific opportunities to participate in the Contract;

9.8.2.2 NYCEDC Assistance. The Consultant submitted timely requests for assistance to the Corporation's M/WBE liaison officer and provides the Corporation with a description of how the Corporation's recommendations were acted upon and an explanation of how action upon such recommendations did not lead to the desired level of participation of M/WBEs;

9.8.2.3 Advertised Opportunities. The Consultant advertised opportunities to participate in the Contract in general circulation media, trade and professional association publications, small business media and publications of M/WBE organizations;

9.8.2.4 Follow Up with M/WBEs. The Consultant sent timely written notices to advise M/WBEs that their interest in the Contract was solicited;

9.8.2.5 Substitution of Work. The Consultant made efforts to identify portions of the Contract Work that could be substituted for portions originally designated for the participation by M/WBEs in the M/WBE Subcontractors Participation Plan and for which the Consultant claims an inability to retain M/WBEs;

9.8.2.6 Meeting with M/WBEs. The Consultant held meetings with M/WBEs prior to the date their proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their proposals were solicited;

9.8.2.7 Negotiated with M/WBEs. The Consultant made efforts to negotiate with M/WBEs as relevant to perform specific subcontracts, or acts as suppliers or service providers; and

9.8.2.8 Interested Subcontractor List. The Consultant made efforts to contact interested M/WBEs listed on the Website's Interested Subcontractor list.

9.8.3 The Corporation's M/WBE Director and Chief Contracting Officer will provide written notice to the Consultant of the determination on whether the Consultant has made all reasonable good faith efforts to meet the Participation Goal.

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

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

- (i) terminate the Contract;
- (ii) assess actual and consequential damages for and/or exercise its right to set off any additional expenses the Corporation incurs to complete the Project satisfactorily in accordance with the Corporation's M/WBE Program and in order to meet the Participation Goal including, without limitation, the actual and administrative costs of:
  - (a) meeting the Participation Goal through additional procurements;
  - (b) payments made to any other consultant retained to complete the Services; and
  - (c) investigation and enforcement; or
- (iii) assert any other right or remedy it has under the Contract.

9.11 Liquidated Damages for Failure to Fulfill Approved Participation Goals. If the Consultant fails to fulfill its Participation Goals set forth in its Subcontractors Participation Plan or the Participation Goals as modified by the Corporation pursuant to Section 9.8, the Corporation may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to M/WBEs to meet the Participation Goal and the dollar amount the Consultant actually awarded and paid to M/WBEs. In view of the difficulty of accurately ascertaining the loss which the Corporation will suffer by reason of the Consultant's failure to meet the Participation Goals, the foregoing amount is hereby fixed and agreed as the liquidated damages that the Corporation will suffer by reason of such failure, and not as a penalty. The Corporation may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of the liquidated damages suffered by the Corporation, the Consultant shall be liable to pay the difference.

9.12 Statements. Statements made in any instrument submitted to the Corporation in connection with the Corporation's M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

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

**ARTICLE 10**  
**MISCELLANEOUS**

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

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

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

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

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

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

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

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

10.9 Notices.

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

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

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

10.11 Refusal to Testify.

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

10.11.2 If:

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



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

then the commissioner or agency head (each of which is hereinafter referred to as the “Commissioner”) whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license involved in such investigation, audit or inquiry shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

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

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

(i) the disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City or the Corporation, as the case may be; and/or

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

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

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity (subject to penalties under subsection 10.11.4 above), provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in subsection 10.11.2(2) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

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

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

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

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

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

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**[INSERT PROJECT NAME]**  
**PROFESSIONAL SERVICES CONSULTANT CONTRACT**  
**FOR THE PROVISION OF [INSERT TYPE OF SERVICES] SERVICES**  
**NYCEDC CONTRACT NO. [INSERT CONTRACT NO.]**  
**PROJECT CODE NO. [INSERT PROJECT CODE]**

**PART III**  
**APPENDICES**

<b>APPENDIX A</b>	<b>DEFINITIONS</b>
<b>APPENDIX B</b>	<b>SCOPE OF SERVICES</b>
<b>APPENDIX C</b>	<b>PAYMENTS</b>
<b>APPENDIX D</b>	<b>FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS</b>
<b>APPENDIX E</b>	<b>INSURANCE REQUIREMENTS</b>
<b>APPENDIX F</b>	<b>EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM</b>
<b>APPENDIX G</b>	<b>E.O. 50 EMPLOYMENT REPORT FORM</b>
<b>APPENDIX H</b>	<b>SUBCONTRACTORS PARTICIPATION PLAN</b>
<b>APPENDIX I</b>	<b>OUTSIDE FUNDING SOURCES</b>
<b>APPENDIX J</b>	<b>APPLICABLE REQUIREMENTS</b>
<b>APPENDIX K</b>	<b>APPLICABLE AGREEMENTS</b>
<b>APPENDIX L</b>	<b>WHISTLEBLOWER POSTER</b>
<b>APPENDIX M</b>	<b>RESERVED</b>

**APPENDIX A**  
**DEFINITIONS**

**APPENDIX A****DEFINITIONS**

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

Additional Insured	All individuals and entities listed in Appendix E
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific “Applicable Agreements” identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific “Applicable Requirements” identified in Part I
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 2013 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2013, as applicable, as each may be amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or his or her designee
Services Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by the Corporation and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than the Corporation, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from the Corporation, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Section 3.5.3
Contract Effective Date	The effective date of this Contract, as stated in Part I, Section 1.3
Corporation	New York City Economic Development Corporation, a not-for-profit corporation organized pursuant to laws of the State of New York
CPL	Contractor Pollution Liability Insurance
Director	The person set forth in Part I, Section 2.2, or such other person as may be subsequently designated by the Corporation

Disability Benefit	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Division	Division of Labor Services of DSBS
Doing Business Data Form	The form available at to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
DSBS	New York City Department of Small Business Services
Electronic Funds Transfer (EFT)	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorized a financial institution to debit or credit an account
E.O. 50	Executive Order No. 50 (1980), as amended or revised from time to time
Employment Report(s)	The reports described in Appendix G and available at to be completed and submitted to the Corporation pursuant to Executive Order 50
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
Federal Courts	United States Federal Courts located in New York City

Final Completion	The performance of all Services contemplated in this Contract to the satisfaction of the Director
Final Payment	The last payment by the Corporation to the Consultant under the Contract upon Final Completion or as provided in Part II, Sections 3.5.2 and 3.5.4
Force Majeure	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
Funds	All funds from the federal, State or local sources to be applied to payments for Services under this Contract
Insurer	Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2
Joint Venture	An association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.



Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
M/WBE Compliance Reports	As described in Part II, Section 9.5
M/WBEs	minority-owned business enterprises and women-owned business enterprises, collectively
M/WBE Subcontractors Participation Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1
Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof
Notify	To give a Notice pursuant to Part II, Section 10.9.1

NYCEDC

The Corporation

Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.3.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete
Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C
Principal	The Consultant's most senior officer of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4

Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
Qualified Joint Venture (“QJV”)	A Joint Venture between one or more M/WBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the Contract, as set forth in the joint venture agreement, is at least 25% of the total profit.
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B
Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B

Specific Terms and Conditions	Part I of this Contract
Fee and Cost Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
Term	The duration of this Contract, as stated in Part I, Section 1.5
UST	Underground storage tanks
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Work-Made-For-Hire	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101

**Work Product**

All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, provided however that Work Product shall not include any Consultant's Underlying Intellectual Property

**APPENDIX B**  
**SCOPE OF SERVICES**

**APPENDIX C**  
**PAYMENTS**

## APPENDIX C

### PAYMENTS BASED ON TASKS COMPLETED

The Maximum Payment for each Portion of the Services shall be the respective amounts set forth for in the Payment Schedule annexed hereto as Exhibit 1 to this Appendix C.

Interim payments shall be made to the Consultant. The interim payments will be made no more frequently than once a month in an amount equal to the Percentage of Completion of each Portion of the Services, multiplied by the Maximum Payment for each Portion performed during the billing period

To request an interim payment, the Consultant shall submit to the Corporation's **Accounts Payable Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

- (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period;
- (ii) the amount of partial payment requested; and
- (iii) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.



## APPENDIX C

### PAYMENTS BASED ON HOURLY RATES

Interim payments shall be made to the Consultant no more frequently than monthly based on the number of hours members of the Consultant's staff, as shown on the Staff and Fee Schedule annexed hereto as Exhibit 1 to this Appendix C, spent providing the Services, multiplied by the hourly rate and applicable multiplier for each such member of the Consultant's staff on the Staff and Fee Schedule

On or before the Commencement Date, the Consultant shall provide to the Director an estimate of the number of hours members of the Consultant's staff, as set forth on the annexed Staff and Fee Schedule ( Exhibit 1), and its Principal are anticipated to spend providing the Services. Such estimate shall be subject to the Director's approval.

To request an interim payment, the Consultant shall submit to the Corporation's **Accounts Payable Department**, not more than once per month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following:

- (i) Services performed by Consultant's Principal and by its professional and technical staff;
- (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period;
- (iii) actual salaries incurred during such month;
- (iv) Subcontractors' Costs incurred during the billing period;
- (v) the amount of partial payment requested; and
- (vi) a representation and warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition.

An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

No multiplier overhead, administrative fee or other mark up will be paid to Consultant for Subcontractors' Costs.

In addition, the Consultant shall submit Progress Reports to the Director at least monthly or in accordance with any other schedule approved by the Director, or at the Director's request. Such Progress Reports shall clearly state the reasons for any actual or anticipated delays in completion of the Services.

**EXHIBIT 1 TO APPENDIX C**  
**[**  
**SAMPLE PAYMENT SCHEDULE**

SAMPLE; TASKS SET FORTH BELOW ARE EXAMPLES ONLY

<b>Task</b>	<b>Maximum Payment</b>
 <i><b>Task 1 – Concept Development and Review</b></i>	
Information Gathering	\$
Analysis and Surveys (including Utilities)	\$
Conceptual Design	\$
Concept Book	\$
<b>Task 1 Total</b>	<hr style="border: 0.5px solid black;"/> \$
 <i><b>Task 2 – Schematic Design</b></i>	
Three Schematic Designs	\$
One Schematic Design	\$
Schematic Book	\$
<b>Task 2 Total</b>	<hr style="border: 0.5px solid black;"/> \$
 <i><b>Task 3 – Preliminary Design Development</b></i>	
Preliminary Design Development	\$
Agency Approvals	\$
Preliminary DD Package	\$
<b>Task 3 Total</b>	<hr style="border: 0.5px solid black;"/> \$
 <i><b>Task 4 – Final Design Development</b></i>	
Final Design Development	\$
Final Design Development Package	\$
Additional Documents	\$
<b>Task 4 Total</b>	<hr style="border: 0.5px solid black;"/> \$
<i><b>Total Tasks 1-4</b></i>	<hr style="border: 0.5px solid black;"/> \$
<b>Total Amount</b>	\$

**EXHIBIT 1 TO APPENDIX C**

**FEE AND COST SCHEDULE**

SAMPLE, POSITIONS AND OFFICES ARE EXAMPLES ONLY

<b>Position</b>	<b>Name</b>	<b>Hourly Rate</b>	<b># of days</b>	<b>Estimated Multiplier</b>
<b>A. <u>SITE OFFICE EMPLOYEES</u></b>				
Project Manager				
Engineer/Contract Administrator				
Engineer				
Architect				
Field Superintendent				
Field Superintendent				
Other (Specify)				
<b>B. <u>HOME OFFICE EMPLOYEES</u></b>				
Chief Estimator				
Senior Estimator				
Estimating Engineer				
Other (Specify)				
<b>C. <u>PRINCIPAL/PROJECT EXECUTIVE</u></b>				
<b>D. <u>PROJECT ACCOUNTANT</u></b>				

**EXHIBIT 2 TO APPENDIX C**  
**EFT ENROLLMENT FORM**



**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**  
**DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)**  
**VENDOR PAYMENT ENROLLMENT FORM**

**INSTRUCTIONS:** Please complete all sections of this Enrollment Form and attach a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name. See the reverse side for more information and instructions.

**Mail to:** New York City Economic Development Corporation, 110 William Street, 4<sup>th</sup> Floor, New York, NY 10038  
 Attention: Controller, Accounting Dept. or Fax to: 212-312-3914

**SECTION I – VENDOR INFORMATION**

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER: (AS IT APPEARS ON W-9 FORM)	<table border="1" style="width:100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td> </tr> </table>												
2. VENDOR NAME (AS IT APPEARS ON W-9 FORM); (AS IT APPEARS ON W-9 FORM)													
3. VENDOR'S PRIMARY ADDRESS:													
4. VENDOR'S EMAIL ADDRESS:													
5. CONTACT PERSON NAME:	6. CONTACT PERSON TELEPHONE NUMBER:												

**SECTION II – FINANCIAL INSTITUTION INFORMATION**

1. BANK ACCOUNT NUMBER:	2. ACCOUNT NAME:												
3. BANK NAME:													
4. BANK BRANCH ADDRESS:													
5. ROUTING TRANSIT NUMBER: (LOCATED AT THE BOTTOM OF YOUR CHECK)	6. ACCOUNTING TYPE: (CHECK ONE)												
<table border="1" style="width:100%; height: 20px; border-collapse: collapse;"> <tr> <td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td><td style="width: 12.5%;"></td> </tr> </table>													<input type="checkbox"/> CHECKING <input type="checkbox"/> SAVINGS
7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:	8. TELEPHONE NUMBER:												

**SECTION III – VENDOR SIGNATURE**

VENDOR SIGNATURE	PRINT NAME	DATE


**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION**
**DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)  
VENDOR PAYMENT ENROLLMENT FORM**
**GENERAL INSTRUCTIONS**

Please complete all sections of the Direct Deposit EFT Enrollment Application and forward the completed application along with a voided check or a copy of an encoded deposit slip that includes an imprinted vendor's name to:

New York City Economic Development Corporation, 110 William St., Room 400  
New York, NY 10038 – Attention: Controller, Accounting Dept or Fax to: 212-312-3914.

**SECTION I – VENDOR INFORMATION**

1. Enter the vendor's social security number or taxpayer ID number, the 9-digit number reported on W-9 form.
2. Provide the name of the vendor (as it appears on the W-9).
3. Enter the vendor's complete address for EFT correspondence associated with this account.
4. Provide the vendor's E-mail address, if you have one.
5. Indicate the name and telephone number of the vendor's contact person. (If you are enrolling yourself individually, you are the contact person).

**SECTION II – FINANCIAL INSTITUTION INFORMATION**

1. Indicate the vendor's bank account number.
2. Indicate the vendor's account name.
3. Provide bank's name.
4. Provide the complete address of your bank.
5. Indicate 9-digit routing (ABA) transit number (located at the bottom of your check).
6. Indicate type of account: (Check one box only).
7. List name and telephone number of your bank's Direct Deposit/EFT Coordinator.

**SECTION III – VENDOR SIGNATURE**

Sign and date where indicated.

**EXHIBIT 3 TO APPENDIX C**

THE CITY OF NEW YORK • OFFICE OF THE COMPTROLLER • BUREAU OF LABOR LAW

**PAYROLL REPORT**

TO BE SUBMITTED WITH REQUISITION FOR PAYMENT

NAME OF PRIME CONTRACTOR		NAME OF CONTRACTOR/SUBCONTRACTOR		ADDRESS		PHONE #		AGENCY			
CONTRACT REGISTRATION #		JOB CODE		WEEK ENDING DATE		PROJECT NAME & LOCATION		PAYROLL #			
TAX I.D. #		NAME		LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER		LIST TRADE & CHECK CLASSIFICATION: JOURNEYPERMAN, APPRENTICE (MVS FOR ASSISTERS), HELPER		RT <input type="checkbox"/> JA <input type="checkbox"/> HA <input type="checkbox"/> OT <input type="checkbox"/>			
(1)		(2)		(3)		(4)		(5)			
NAME		ADDRESS		DAY AND DATE		TOTAL HOURS		BASE RATE OF PAY PER HOUR			
TOTAL HOURS		BASE RATE OF PAY PER HOUR		TOTAL BASE PAY		RATE PER HOUR		PAID TO LOCAL # (if Union is checked)			
TOTAL BENEFITS PAID		GROSS PAY		TOTAL TAX & OTHER DEDUCTIONS		NET PAY					
RT <input type="checkbox"/> JA <input type="checkbox"/> HA <input type="checkbox"/> OT <input type="checkbox"/>		RT <input type="checkbox"/> JA <input type="checkbox"/> HA <input type="checkbox"/> OT <input type="checkbox"/>		RT <input type="checkbox"/> JA <input type="checkbox"/> HA <input type="checkbox"/> OT <input type="checkbox"/>		RT <input type="checkbox"/> JA <input type="checkbox"/> HA <input type="checkbox"/> OT <input type="checkbox"/>		RT <input type="checkbox"/> JA <input type="checkbox"/> HA <input type="checkbox"/> OT <input type="checkbox"/>		RT <input type="checkbox"/> JA <input type="checkbox"/> HA <input type="checkbox"/> OT <input type="checkbox"/>	

INSTRUCTIONS ON REVERSE SIDE

**FALSIFICATION OF THIS STATEMENT IS A PUNISHABLE OFFENSE**

This certified payroll has been prepared in accordance with the instructions contained on the reverse side of this form. I certify that the above information represents wages and supplemental benefits paid to all persons employed by my firm for construction work on the above project during the period shown. I understand that falsification of this statement is a punishable offense.

SIGNATURE

NAME (Print)

TITLE

DATE

20





### Instructions for the Preparation and Submission of a Payroll Report

1. All persons who performed any on-site construction activity, during the period of the requisition, shall be listed on the Payroll Report.
  2. Separate Payroll Reports shall be submitted by the prime contractor and each subcontractor who performed any on-site construction activity during the period of the requisition.
  3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment being reduced.
  4. **PAYROLL REPORT HEADING:** The Payroll Report Heading shall require the following information:
 

**NAME OF PRIME CONTRACTOR:** Enter the name of the firm that has entered into the contract with the New York City government agency.

**NAME OF CONTRACTOR / SUBCONTRACTOR:** The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation. Circle either the word **CONTRACTOR** or **SUBCONTRACTOR** as applicable.

**ADDRESS:** Insert the current address (i.e., street, city, state and zip code) of the firm submitting the Payroll Report.

**PHONE NO.:** Enter the telephone number of the firm submitting the Payroll Report in the space provided.

**AGENCY:** Enter the name of the New York City government agency that has the contract with the Prime Contractor.

**PAYROLL NO.:** In the space provided, enter the Payroll Number of the Contractor or Subcontractor.

**CONTRACT REG. NO.:** Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and/ or the "Order to Commence Work" letters.

**JOB CODE:** In the space provided, enter the Contractor/ Subcontractor's in-house labor distribution code or job number where applicable.

**WEEK ENDING DATE:** In the space provided, enter the last date of the pay-week (i.e., month, day, year).

**PROJECT NAME & LOCATION:** In this space, enter the Project Name and Location where contract work is being performed.

**TAX I.D. NO.:** Enter in this space the Federal Tax Identification Number of the firm submitting the Payroll Report.
  5. For every employee who performed any on-site construction activity during the period of the Payroll Report, the following information shall be provided:
    - 1) **NAME, ADDRESS, LAST FOUR DIGITS OF THE SOCIAL SECURITY NO.:** The legal name, current address and the last four digits of the social security number of each employee. (Employers must keep the full social security number on file for each of their covered workers.) If the employee has no social security number, please list his/her IRS Individual Taxpayer Identification Number and mark it "TIN".
    - 2) **LIST TRADE & CHECK WORK CLASSIFICATION:** Specify and insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller, i.e., Electrician, Laborer, etc. Check next to the letter J if the individual is a Journeyman. Check next to the letter A if the person is a Registered Apprentice with the Department of Labor of the State of New York. Check next to the letter H only if the person is a Helper in a trade classification that has Helper rates listed in the Comptroller's Schedule of Prevailing Wages.
    - 3) **TIME:** RT indicates Regular Time, and OT indicates Overtime.
    - 4) **DAY AND DATE:** Below this heading, in the first row, enter the appropriate sequence of the contractor's pay records. MTWTFSS, for example, is the sequence to use if the workweek ends on a Sunday, and SSMTWTFF is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the workweek, insert the corresponding date. Below the heading **HOURS WORKED EACH DAY**, at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate box either for RT (Regular Time) and/ or OT (Overtime). If an employee worked Shift Time, the RT (Regular Time) row shall be used and adjusted accordingly.
    - 5) **TOTAL HOURS:** Add the hours worked for Regular and/ or Shift Time with the hours worked for Overtime, and enter separate totals in this column.
    - 6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
    - 7) **TOTAL BASE PAY:** Total amount earned by the employee, not including benefits.
- SUPPLEMENTAL BENEFITS:**
- 8) **RATE PER HOUR:** Amount of supplemental benefits paid / provided per hour.
  - 9) **PAID TO:** Place a check mark in the appropriate box: U for Union if benefits paid to a Union, E for Employee if benefits paid in cash (or check) directly to the Employee, or O for Other, if benefits are otherwise paid / provided to the employee. If U is checked, you must insert the "Local" number of the union in that box.
  - 10) **TOTAL BENEFITS PAID:** Total amount of supplemental benefits paid / provided for the workweek to the employee.
  - 11) **GROSS PAY:** Total amount earned for workweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee (i.e., column (7) + column (9) E if Box E is checked and payment made directly to employee). No other type of benefit should be included in this column's total.
  - 12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State and City Taxes, etc.). This does not absolve you from maintaining appropriate tax and other records required by law).
  - 13) **NET PAY:** Total amount of pay after all deductions (i.e., the actual Take-Home Pay).

**APPENDIX D**

**FORM OF CERTIFIED STATEMENT REGARDING  
USE OF NON-ORIGINAL MATERIALS**

**APPENDIX D**

**FORM OF CERTIFIED STATEMENT REGARDING  
USE OF NON-ORIGINAL MATERIALS**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

The undersigned, being first duly sworn, deposes and states as follows:

1. I am the Principal of the Consultant named below in connection with the contract (the "Contract") identified below between the Consultant and New York City Economic Development Corporation ("NYCEDC").

2. I make this affidavit pursuant to Section 5.2.6(iii) of the Contract to verify certain information regarding non-original materials included in the Work Product (as defined in the Contract) furnished by the Consultant to NYCEDC pursuant to the Contract.

3. I hereby certify that the information set forth on the "List of Rights, Limitations and Requirements Regarding the Use and Display of Non-Original Materials Included in Consultant's Work Product" (the "Non-Original Materials List") annexed hereto and made a part hereof, and the licenses, releases, permissions, clearances and other documents (collectively, the "Licenses") annexed thereto, are complete, true and accurate as of the date of this affidavit, and I acknowledge and understand that NYCEDC shall rely thereon in connection with any use and display of such materials.

4. In particular, I hereby certify that the annexed Non-Original Materials List and Licenses set forth (i) all non-original materials included in Consultant's Work Product; (ii) all information as to the source of such materials; (iii) all information as to any durational limitations on use of such materials; (iv) all requirements as to notices that must be displayed in connection with display, including the specific owner of the rights to be credited; and (v) all other limitations on the use and display under the Licenses.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

Consultant: \_\_\_\_\_ Printed Name: \_\_\_\_\_

NYCEDC Contract No.: \_\_\_\_\_ Title: \_\_\_\_\_

Sworn to before me this  
day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

**LIST OF RIGHTS, LIMITATIONS AND REQUIREMENTS  
REGARDING THE USE AND DISPLAY OF NON-ORIGINAL MATERIALS  
INCLUDED IN CONSULTANT’S WORK PRODUCT**

<b>Non-Original Material</b>	<b>Source</b>	<b>Rights/Limitations/Requirements*</b>

**\* ATTACH COPIES OF ALL LICENSES, RELEASES, PERMISSIONS, CLEARANCES AND OTHER RELEVANT DOCUMENTS**

**APPENDIX E**

**INSURANCE REQUIREMENTS**

- 1. Required Policies and Amounts**
- 2. Additional Insureds**
- 3. Required Provisions**
- 4. Sample Form of Insurance Certificate**

**APPENDIX E****INSURANCE REQUIREMENTS**

## 1. Required Policies and Amounts\*

Workers' Compensation/  
Disability Benefits:

In statutory amounts

Employer's Liability:

The greater of statutory amounts or \$1,000,000

Commercial General  
Liability:

A minimum of \$1,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate

The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$25,000

Automobile Liability:

\$1,000,000 combined single limit per occurrence

Umbrella/Excess Liability:

\$10,000,000 on a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer's primary liability limits

If the Consultant or its Subcontractors use floating equipment, barges or floats, or performs marine-related construction, the Consultant and as applicable, its Subcontractors, shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services:

U.S. Harbor Workers'  
Long Shoremens'  
Compensation Act:

In statutory amounts

Marine Protection and  
Indemnity:

\$25,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$25,000,000 in the aggregate per year

If the Project is adjacent to or includes an existing railroad or subway line, the Consultant, or its Subcontractors, shall purchase and maintain the following insurance in the following amounts in connection with the performance of the Services by the Consultant and its Subcontractors, and any work incidental thereto:

Railroad Protective Liability: \$1,000,000 per occurrence, but if an annual aggregate is applicable to the policy not less than \$2,000,000 in the aggregate

If the Consultant or any of its Subcontractors is performing asbestos or other toxic or hazardous materials remediation, removal, abatement, storage or disposal work including, without limitation, related demolition work, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following types and in the following amounts in connection with the performance of the Services and any work incidental thereto:

Contractor Pollution Liability (“CPL”) Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability (“PLL”) Policy, Transportation Coverage and Non-Owned Disposal <u>Site Coverage:</u>	\$5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than \$5,000,000 in the aggregate per year dedicated to this Project, on an “occurrence” basis, with a term of not less than ten (10) years
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Such CPL and PLL policies shall be for a term of not less than (10) years, on an “occurrence” basis, and any aggregate applicable to such policies shall be dedicated to this Project. In addition, such policies shall include, without limitation, and as applicable, (a) bodily injury and defense coverage for asbestos and lead; (b) coverage for unknown UST’s; (c) a definition of “property damage” that includes diminution in value of third-party properties; (d) a statement that such insurance is primary and over any surety contracts or bonds covering the Services; (e) a statement that the insured’s rights will not be prejudiced if there is a failure to give notice due to the insured’s belief that the occurrence was not covered; (f) coverage for products brought onto the work site where Services are being performed; (g) a definition of “stop loss” or “cleanup cost cap” that includes monitoring activities; (h) a definition of “cleanup costs” that includes any costs associated with natural resources damages; and (i) a statement that exclusions for modifications of remedial action plans (“RAP”) shall not include changes required by regulatory agencies (either via a change in regulations or as a result of governmental entity oversight, increased levels or quantities of pollutants within the boundary of the RAP, discovery of pollutants not identified in the exclusion, and amendments to the RAP because of a change in technological approach).

If the Consultant or any of its Subcontractors is performing professional services in its capacity as a professional, including as may be evidenced by a license to practice that profession, the Consultant or its Subcontractors shall purchase and maintain additional insurance of the following type and in the following amount in connection with the performance of the Services and any work incidental thereto:

Professional Liability/Errors & Omissions Insurance:

Professional liability (“PL”) and/or errors and omissions (“E & O”) insurance policies shall be written with a minimum amount of \$2,000,000 per claim and in the aggregate.

If the Consultant cancels its PL or E & O policy during, or lets its PL or E & O policy coverage lapse after, the policy period in which the term for services under the Consultant Contract ends, the Consultant must obtain tail coverage, or an extended reporting period endorsement, that extends coverage of the professional liability insurance for a period of at least three years.

**\*All required policies shall include a waiver of the right of subrogation with respect to all additional insureds named therein as well as the required Workers’ Compensation coverage.**



**APPENDIX E**

**INSURANCE REQUIREMENTS**

2. Additional Insureds

For the purposes of this Contract and the requirements of Article 6 thereof including, without limitation, Section 6.3.3 (iii), the term “Additional Insureds” shall include the following individuals and entities:

New York City Economic Development Corporation

The City of New York

and such other entities and individuals as the Corporation may direct from time to time.

## APPENDIX E

### INSURANCE REQUIREMENTS

#### 3. Required Provisions

The policies required under Section 6.3.9 (ii) of the Contract shall contain the following provisions, if available:

“A. Notices from the insurer (the “Insurer”) to the New York City Economic Development Corporation (the “Corporation”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, New York City Economic Development Corporation, at 1 Liberty Plaza, New York, NY 10006 (with a copy to the Corporation’s Contract Administrator at the same address), and to the Commissioner, New York City Department of Small Business Services, at 1 Liberty Plaza, New York, NY 10006 or such other addresses as may be specified by the Corporation;

B. The Insurer shall accept notice of accident from the Corporation or the City as soon as practicable after receipt by an official of such Additional Insured (as identified in Appendix E of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City as soon as practicable after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, as soon as practicable after receipt by such party as valid and timely notice under this policy;

D. Notice of accident or claim to the Insurer by the Consultant, the Corporation or the City shall be deemed notice by all under this policy;

E. This policy shall not be canceled, terminated or modified by the Insurer or the Consultant unless thirty (30) days prior written notice is sent by registered mail to the Corporation or the City;

F. The presence of engineers, inspectors or other employees or agents of the Consultant, the Corporation or the City at the site of the Services performed by the Consultant shall not invalidate this policy of insurance; and

G. Violation of any of the terms of any other policy issued by the Insurer to the Consultant or a subcontractor of the Consultant shall not in violate this policy; and

H. Insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer.”

**APPENDIX E**

**INSURANCE REQUIREMENTS**

4. Sample Form of Insurance Certificate



**APPENDIX F**

**E.O. 50 SUPPLY & SERVICE RIDER**

**EQUAL EMPLOYMENT OPPORTUNITY**

**APPENDIX F****E.O. 50 SUPPLY & SERVICE RIDER****EQUAL EMPLOYMENT OPPORTUNITY**

**[Note: for purposes of this rider, the “contractor” means the Consultant identified in this Contract]**

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) (§10-14) as revised (“E.O.50”) and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the contractor agrees that it:

- (1) will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) will not discriminate in the selection of subcontractors on the basis of the owner’s, partners’ or shareholders’ race, color, creed, national origin, sex, age, handicap, marital status or sexual orientation or citizenship status;
- (3) will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or citizenship status, or it is an equal employment opportunity employer;
- (4) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 (§10-14) and the rules and regulations promulgated thereunder; and
- (5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by E.O. 50 (§10-14), the rules and regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (the “Division”). Copies of all required reports are available upon request from the contracting agency; and
- (6) will permit the Division to have access to all relevant books, records and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, such noncompliance shall

constitute a material breach of the contract and noncompliance with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

- (i) disapproval of the contractor;
- (ii) suspension or termination of the contract;
- (iii) declaring the contractor in default; or
- (iv) in lieu of any of the foregoing sanctions, the Director may impose an employment program.

The Director of the Division may recommend to the contracting agency head that a contractor who has repeatedly failed to comply with E.O. 50 (§10-14) and the rules and regulations promulgated thereunder be determined to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of New York City's small purchase limit established by rule of New York City's Procurement Policy Board to which it becomes a party unless exempted by E.O. 50 (§10-14) and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of the Division of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 (§10-14) and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 (§10-14) and the rules and regulations promulgated thereunder.

## **APPENDIX G**

### **E.O. 50 EMPLOYMENT REPORT FORM**

The Consultant shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Corporation which can be found at in the following section:

“Resources/Vendor Resources”

If the Consultant cannot access or download these forms, the Corporation will, upon request, send the Consultant the required forms. The text of said section reads as follows:

#### **Non-Construction Consulting Contracts**

Non-construction consulting contracts require a Supply & Service employment report. Generally, the “under 50 employees” form should be used by companies with fewer than 50 employees, and the longer “full form” should be used for companies with more than 50 employees. Please refer to the Supply & Service instructions document to learn more about the forms.

[Supply & Service Employment Report Instructions](#)

[Supply & Service – under 50 employees](#)

[Supply & Service – full form](#)



**APPENDIX H**

**M/WBE SUBCONTRACTORS PARTICIPATION PLAN**

**APPENDIX J**  
**APPLICABLE REQUIREMENTS**

**APPENDIX K**  
**APPLICABLE AGREEMENTS**

## APPENDIX L

### WHISTLEBLOWER POSTER



#### **REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION**

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

**Department of Investigation (DOI) Complaint Bureau**  
212-825-5959

or by mail or in person at:

**DEPARTMENT OF INVESTIGATION**  
80 MAIDEN LANE, 17th FLOOR  
NEW YORK, NEW YORK 10038  
Attention: COMPLAINT BUREAU

or file a complaint on-line at:

[www.nyc.gov/doi](http://www.nyc.gov/doi)

*All communications are confidential.*

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

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DOI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages.



**APPENDIX 6:**

**HOURLY RATES SCHEDULE**

Complete Column 1 with all titles of staff to be utilized throughout the term of the proposed contract.

Complete Column 2 with the corresponding hourly rate for each title.

<b>Column 1: Title</b>	<b>Column 2: Hourly Rate</b>