

**THE CITY OF NEW YORK
DEPARTMENT OF BUILDINGS (the “Agency”/“Department”)
REQUEST FOR PROPOSALS**

TITLE: ON-CALL EMERGENCY BUILDING ASSESSMENT TEAMS

EPIN #: 81019P0003

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AUTHORIZED AGENCY CONTACT PERSON

Proposers are advised that the Authorized Agency Contact Person for all matters concerning this Request for Proposals is:

Name:	Ernesto Vaughan
Title:	Contracting Officer
Mailing Address:	280 Broadway, 6th Floor New York, NY 10007
Telephone #:	212-393-2237
E-Mail Address:	evaughan@buildings.nyc.gov

SECTION I - TIMETABLE

A. Release Date of this Request for Proposals: May 29, 2020

All questions and requests for additional information concerning this RFP should be directed to the Authorized Agency Contact Person.

Proposers should submit questions no later than 10 days prior to the proposal due date since the Agency may be unable to respond to questions received after that date.

_. Virtual Pre-Proposal Conference:

oo Date: June 17 , 2020

oo Time: 11am

oo Web-Ex Meeting Details:

Meeting number (access code): 473 868 695

Meeting password: 10007

<https://buildings.webex.com/buildings/j.php?MTID=meee7362bac0215d24bd1a0c31863c6b1>

Attendance by proposers is optional but recommended by the Department. Please email the Authorized Agency Contact Person with your firm's intention to attend and with any questions pertaining to the RFP by June 12, 2020.

***Please note that if circumstances allow and we are able to host an in person Pre-Proposal Conference, an Addendum will be issued indicating the change and we will update the location accordingly.**

_. Proposal Due Date and Time and Location:

oo Date: July 2, 2020

oo Time: 3:00 PM

oo Location: 280 Broadway, 6th Floor, New York, NY 10007

Only E-mailed Proposals as a PDF will be accepted by the Agency/Department.

Proposals received after the Proposal Due Date and Time are late and shall not be accepted by the Agency, except as provided under New York City's Procurement Policy Board Rules.

The Agency will consider requests made to the Authorized Agency Contact Person to extend the Proposal Due Date and Time prescribed above. However, unless the Agency issues a written addendum to this RFP which extends the Proposal Due Date and Time for all proposers, the Proposal Due Date and Time prescribed above shall remain in effect.

_. Anticipated Contract Start Date: TBD

SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of this Request for Proposal

As part of the Citywide Disaster Preparedness Plan, the City of New York (the “City”) is committed to providing on-call emergency services in response to natural and/or man-made disasters that impact any New York City borough. To achieve this goal, the City is seeking to establish a registry of on-call emergency contractors that will be required to expeditiously respond to any City or New York State (the “State”) declared emergency. As part of this effort, the Department of Buildings (“DOB” or “Department”) is pleased to announce the following contracting opportunity.

B. Background

The New York City Department of Buildings promotes the safety of all people that build, work, and live in New York City by regulating the lawful use of over one million buildings and construction sites across the five boroughs. With a focus on safety, service, and integrity, DOB enforces the City’s Building Codes, Zoning Resolution, and the New York State Multiple Dwelling Law through review and approval of building plans, permitting and licensing functions, inspections, code and zoning compliance review, emergency response and professional analysis of accidents to prevent future incidents. The Department is committed to education and outreach programs that provide the construction industry, property owners and tenants with a heightened understanding of construction safety awareness.

In the summer of 2016, the City, through the Department of Design and Construction (“DDC”), awarded thirteen contracts for emergency construction and construction-related services for six discrete work categories (“Original On-Call Emergency Contracts”) as part of its Citywide Disaster Preparedness Plan. Work under these contracts was consistent with conducting emergency disaster operations pursuant to the Stafford Act¹, and, while not limited to declared Federal disasters, work under the Original On-Call Emergency Contracts could only be ordered under State or locally declared disasters.

The Original On-Call Emergency Contracts are currently in their extension term and the City seeks to procure a new contract to establish the registry of on-call emergency contractors.

In line with the Federal Emergency Management Agency’s (“FEMA”) 2018-2022 Strategic Plan, the City is committed to building a “Culture of Preparedness” to ensure a prepared and resilient New York City, ready to respond to any natural or man-made disaster. Unlike the Original On-Call Emergency Contracts, these new On-Call Emergency Contracts may be activated before a State or local state of emergency is declared, provided that the Commissioner of New York City Emergency Management (“NYCEM”) makes a determination that a State or local state of emergency is likely to be declared within forty-eight (48) hours. The City intends to compensate the vendors for mobilizing in preparation for the impending emergency.

Furthermore, the City intends to increase the number of the On-Call Emergency Contract categories solicited under the Original On-Call Emergency Contracts to enhance its state of readiness under the Citywide Disaster Preparedness Plan.

As such, the City seeks to engage up to 48 qualified firms to perform emergency construction and non-construction work, as well as to provide construction management services. There are 16 categories (the “Category” or “Categories”) as follows:

¹ The Robert T. Stafford Disaster Relief and Emergency Act (Stafford Act) is a United States federal law designed to bring an orderly and systemic means of federal natural disaster assistance for state and local governments in carrying out their responsibilities to aid citizens.

Category 1: Critical Public Facility Restoration;
Category 2: Construction Services for Temporary Restoration of Housing;
Category 3: Construction Support for Urban Search and Rescue;
Category 4: Debris Removal;
Category 5: Debris Removal – Marine Transportation;
Category 6: Provision of Medical Space and/or Shelters;
Category 7: Communications/IT Services Restoration;
Category 8: Provision of Environmental Testing Services;
Category 9: Supervision, Management, and Administrative Services;
Category 10: Building Demolition;
Category 11: Building Assessment Teams;
Category 12: Transportation Contracts;
Category 13: Ground Support;
Category 14: Base Camp Providers;
Category 15: Temporary Unskilled Labor Contracts; and
Category 16: Environmental Remediation Services

C. Objectives of Current Procurement

The City, through DOB, will procure three (3) contracts for the following Category:

Category 11: Building Assessment Teams

In a large-scale emergency, the Contractor will perform damage assessments of buildings (structure and equipment) and their life protective systems impacted by a disaster through task orders. These assessments will pertain only to the structural and safety of the building for occupancy. The assessments will be performed in accordance with the standards set forth by the Applied Technology Council (ATC).

Other City agencies that are subject matter experts for the remaining Categories will procure contracts for those Categories. Solicitation materials for all Categories of work are available on NYCEM's site accessible at [TBD].

More detailed description of the scopes of services for the work that DOB is currently procuring is included in Section III.A of this Request for Proposals ("RFP"), Scope of Services.

DOB seeks to engage up to three qualified firms for Category 11.

Proposers submitting proposals for other categories are not precluded from proposing on DOB's RFP, and vice versa, subject to the procuring agency's RFP. However, any contractor awarded a contract for any of the other Categories will not be awarded a contract for the Ninth Category, Supervision, Management, and Administrative Services. Correspondingly, any contractor awarded a contract for the Ninth Category will not be awarded a contract for any of the remaining Categories. In the event that the same entity submits a proposal for any of the Categories and also for the Ninth Category, the City reserves the right to determine whether that proposing entity will be awarded a contract for the Ninth Category or for any of the other Categories for which it submitted a proposal (if any), based on the proposing firm's qualifications, capacity, and the best interest of the City.

DOB is procuring this On-Call Emergency Contract in compliance with all federal procurement rules as required by 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and all applicable State and local laws and rules.

Notwithstanding the City's intention to procure these On-Call Emergency Contracts, the City retains the right to award contracts for emergency work without the use of these Contracts.

D. Anticipated Contract Term

It is anticipated that the term of the contracts awarded from this RFP will be two years from the Department's notice to proceed. The contract may include three one-year options to renew. The maximum term of the contract will be five years. The Department reserves the right, prior to contract award, to determine the length of the initial contract term and each option to renew, if any.

E. Anticipated Contract Maximum

Each contract awarded under category eleven shall not exceed \$1,500,000 dollars. Each renewal may include additional funding of \$10,000.00 each year for planning and mobilization.

The maximum allowance per award for the preparation of the plan addressing readiness and mobilization in the event of a disaster ("Disaster Readiness and Mobilization Plan or DRMP") is set at a maximum of \$63,000 for the first year of the contract term which includes the accepted DRMP, Exercise Participation and DRMP revision. This allowance is for the development of (or tailoring of already existing) the DRMP. Funding for DRMP is expected to be higher in the first year of the contract term to cover the development of, or tailoring of an already existing, DRMP. Funding for planning and preparedness efforts in the subsequent years of the contract term is expected to be lower as the contractor will be required to only refresh and test the DRMP.

F. Anticipated Payment Structure

Payment for all required services shall be in accordance with Article 4 of the Contract Agreement (Attachment O). Information regarding the Fee Proposal is set forth in Attachment C.

The method of payment for the performance of all required emergency services shall be specified in the Task Order. However, for most services, the specified method of payment shall be through fixed fees for fixed scope of work to be paid upon reaching specific milestones and/or deliverables set forth in the Task Order(s). Alternatively, all-inclusive hourly rates as set forth in the Disaster Readiness and Mobilization Plan, or a portion thereof, shall be used as a basis for negotiating fees with the contractor. Payments based on time and materials and/or time card basis, with a not to exceed amount, will only be used if, under the totality of the circumstances, the Department determines that no other form of payment is suitable.

The method of payment for the Disaster Readiness and Mobilization Plan shall be through a fixed fee, paid upon completion of specific milestones set forth in the Task Order(s). The Contractor's price proposal shall be used as a basis for negotiating a fixed fee. This fixed fee will be deemed to include all costs and expenses incurred by the Contractor in preparation of the Disaster Readiness and Mobilization Plan, including but not limited to all expenses related to management and overhead, all expenses in connection with providing the non-reimbursable items and/or services, and any anticipated profits.

However, the Agency will consider proposals to structure payments in a different manner and reserves the right to select any payment structure that is in the City's best interest.

G. Minimum Qualifications

Professionals must have a certificate of completion no older than five years in:

- Applied Technology Council (ATC) 45 (Flood) and 20 (Earthquake);
- FEMA EMI IS-1160: Damage Assessment Operations; and/or

- NYC DOB Damage Assessment Full Scale Exercise (COOP-DAPR)

Professionals must maintain certifications and will be required to attend refresher training.

H. **Joint Ventures and Other Business Relationships**

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

The joint venture must be formed as a separate legal entity at the time of award. DOB does not recognize the corporate configuration wherein one company is “in association with” another. Relationships between two or more firms shall be either as joint venture or prime contractor/subcontractor. In the event that a proposal is received wherein two or more firms are described as being “in association with” each other, DOB will treat the relationship as one of prime contractor/subcontractors. DOB will allow subcontracting on this contract. DOB must approve any and all subcontractors the prime(s) proposes before they are allowed to perform work on this contract. The RFP evaluation will be handled accordingly, and if chosen as a winner, the contract documents will show only the prime firm on the signature page, and all other firms will be treated as subcontractors. If a joint venture submits a proposal, all participants in the joint venture shall be bound jointly and severally and each participant shall execute the proposal. If a single entity proposer cannot demonstrate that it meets all of the referenced qualifications, then the single entity proposer may, with others, form a joint venture and request that the joint venture be deemed to be the proposer (i.e. members of the joint venture may meet the qualification requirement collectively). If the proposer is a joint venture, including a consortium, partnership or any other form of a joint venture, or an association that is not a legal entity, the proposal must include a letter signed by an authorized representative of each member indicating a willingness to accept joint and several liability.

SECTION III - SCOPE OF (SERVICES)(WORK) AND M/WBE REQUIREMENTS [IF APPLICABLE]

A. Scope of Services

In a large-scale emergency, the contractor will perform damage assessments of buildings (structure and equipment) and their life protective systems impacted by a disaster. These assessments will pertain only to the structure and safety of the building for occupancy. The assessments will be performed in accordance with the standards set forth by the Applied Technology Council (ATC).

Upon registration of each On-Call Emergency Contract, DOB will issue the first Task Order to all contractors holding the On-Call Emergency Contracts, requiring each contractor to prepare a Disaster Readiness and Mobilization Plan (“DRMP”) for the DOB Category for which the contractor was selected, in this case Category 11 Building Assessment Teams (“Task Order 1”). The contractor is not required to develop a brand-new DRMP if the contractor already has an existing plan that can be tailored to the specific category of work for which the contractor was selected. The DRMP will be subject to City’s approval. Throughout the term of the Contract, the City may request that the contractor revise or amend its DRMP based on new developments, and/or responses to past emergencies. The maximum allowance per contract for the preparation and updating of the DRMP is \$100,000.00, for the duration of the contract term.

Notwithstanding Task Order 1, subsequent Task Orders may be issued 1) when a New York State or City emergency declaration is issued pursuant to the New York State Executive Law, OR 2) before a New York State or City emergency declaration is issued, provided that the Commissioner of NYCCEM makes a determination that such state of emergency is likely to be declared within forty-eight (48) hours. In addition, approval for emergency procurements must also be obtained pursuant to the New York City Charter. Except for Task Order 1, each Task Order issued under these On-Call Emergency Contracts will be subject to the type of disaster and emergency situations that require additional contracted resources to supplement the City response to an emergency declaration as per New York City Procurement Policy Board Rule 3-06. The work of these subsequent Task Order may extend beyond the period of the emergency declaration. In order to ensure that on-call emergency services are performed in a timely manner, it is DOB's intention to have these contracts available to be used on an as-needed basis.

If the need arises for these emergency services, DOB will contact the contractor(s) holding contract(s) and solicit responses from the contractor(s) for the proposed Task Order(s) via a mini-RFP process, unless the exigent need is so great that it is necessary to contact fewer than all of the contractors within a specific category. To the extent possible, the Contractor’s proposal shall include:

- a. The Contractor’s price and basis for such pricing to perform the Task Order for Emergency Response Work;
- b. The identity of proposed Subcontractors, to the extent they are known; and
- c. The Contractor’s estimated time for performance.

If the Contractor’s proposal (attached as Exhibit J) for the award of the On-Call Emergency Contract included unit prices, such unit prices shall be the basis for the price proposal to the extent they are applicable. To the extent possible, the Contractor’s proposal shall follow its DRMP. The Task Order award will be determined through competition by price and/or combination of other factors (including, but not limited to, capacity, location, and experience).

Except for Task Order 1, depending on the severity of the emergency, the contractor may be required to proceed with the work without a written Task Order, which will be issued within 72 hours after the City notifies the contractor of the need for the contractor’s services. The Task Order process is described in Article 5 of the attached Contract Agreement.

B. Requirements for Key Personnel

The terms and conditions regarding the contractor's obligation to provide personnel for the performance of services are to be specified in the task order(s). Proposers are advised to carefully review these requirements for the provision of personnel to ensure their capability of complying with specified staffing requirements.

Requirements for Key Personnel are set forth below.

Title	Years of Experience	Years in Relevant Supervising Experience
Principal	12	5
Project Engineer	6	3
Senior Structural Engineer	6	NA
Junior Structural Engineer	4	NA

The Contractor may propose additional titles (along with a description of duties and educational and experience requirements) in its proposal. Such titles may be included in this section upon approval by the Agency.

C. Contract Provisions

The services to be provided by the contractor and all standards of performance applicable to the required services are set forth in the form of contract, attached hereto as the Contract Agreement in Attachment O and incorporated herein as part of this RFP. Any firm awarded a contract as result of this RFP will be required to sign a contract containing the City's contract provisions in the form they appear in the attached Contract. The proposer is advised to carefully review the contract in its entirety before submitting a proposal.

D. Selection Process and Task Order Process

Selection of a firm to perform services for a specific Task Order will be in accordance with Article 5 of the attached Contract Agreement. The Task Order process is set forth in Article 5 of the attached Contract. Proposers are advised to review this section carefully to ensure understanding. Please note that the contractor(s) may be initially required to perform the emergency services under this contract without a Task Order in accordance with Article 5 of the attached Contract Agreement.

E. Department Assumptions Regarding Contractor

The Department's assumptions regarding which approach will most likely achieve the goals and objectives of this RFP are:

1. Experience

Proposers are expected to have:

- Routinely engaged in the past five to ten years in responding to, and performing work in, emergency situations of varying magnitude.
- Experience developing and maintaining disaster readiness and mobilization plans.
- Prior project experience performing the types of work outlined in this RFP, including all relative information pertaining to this work.
- The Proposer must provide a statement of experience and qualifications of the Proposer, including experience with local, state, or federal disaster situations.

2. Organizational Capability

Proposers are expected to:

- Have the ability to provide personnel for the required on-call emergency services.
- Have the ability to provide sufficient personnel in the event of multiple Task Orders.
- Be proficient in the use of at least one digital data collection process (e.g., Esri Collector or something compatible)
- Be able to provide the firm's current and anticipated workload.
- Be able to provide a plan on how they will deliver the services required and the ability to respond to multiple events at different locations at the same time.
- Have the ability to be able to obtain subcontractors for sufficient labor, materials, equipment, etc. and be able to mobilize on any site within two hours of receiving notice.
- Must be able to perform a minimum of three emergency Task Orders.

3. Approach

Proposers are expected to:

- Be able to perform damage assessments of buildings, including structure and equipment, and their life protective systems impacted by a disaster.
- Be able to prepare a DRMP that is tailored to the specific category of work for which the contractor was selected.
- Be able, in the event of an emergency, proceed with the work without a written Task Order which will be issued within seventy-two (72) hours with the exception of Task Order 1.

F. Insurance

The contractor or subcontractors performing work pursuant to this contract must provide the types and amounts of insurance specified in Attachment K. The contractor or subcontractors performing work pursuant to this contract must provide the types and amount of additional insurance set forth in Task Orders. The proposer is advised to carefully review such insurance requirements.

G. Department Assumptions Regarding Payment Structure

Payment for all required services shall be in accordance with Article 4 of the attached Contract Agreement. Information regarding the Fee Proposal is set forth in Attachment C of this RFP.

The method of payment for the performance of all required emergency services shall be specified in Task Orders. However, for most services, the specified method of payment shall be through fixed fees for fixed scope of work to be paid upon reaching specific milestones and/or deliverables set forth in the Task Order. Alternatively, all-inclusive hourly rates as set forth in the DRMP, or a portion thereof, shall be used as a basis for negotiating fees with the contractor. Payments based on time and materials and/or time card basis, with a not to exceed amount, will only be used if, under the totality of the circumstances, the Department determines that no other form of payment is suitable.

However, the Agency will consider proposals to structure payments in a different manner and reserves the right to select any payment structure that is in the City's best interest.

H. Participation by Minority-Owned and Women-Owned Business Enterprises in City Procurement

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

I. Compliance with Local Law 34 of 2007

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

J. Whistleblower Protection Expansion Act Rider

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

K. Paid Sick Leave Law Contract Rider

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

L. Compliance with the Iran Divestment Act

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

M. Subcontractor Compliance Notice

The selected vendor will be required to utilize the City's web based system to identify all subcontractors in order to obtain subcontractor approval pursuant to PPB Rule section 4-13, and will also be required to enter all subcontractor payment information and other related information in such system during the contract term. Please read Attachment I the subcontractor compliance notice as it relates to competitive solicitations. The City's new web based subcontractor reporting system will be located on line at the Payee Information Portal at: <https://a127-pip.nyc.gov/webapp/PRDPCW/SelfService>.

N. HIRENYC and Reporting Requirements

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

O. Supply and Service Employment Report

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

P. PASSPort

Procurement and Sourcing Solutions Portal (PASSPort) Disclosure Filing (formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)
All organizations intending to do business with the City of New York should complete an online disclosure process to be considered for a contract. This disclosure process was formerly completed using Vendor Information Exchange System (VENDEX) paper-based forms. **Paper submissions, including certifications of no changes to existing VENDEX packages will not be accepted in lieu of complete online filings.**

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

SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL

Instructions: Proposers should provide all information required in the format below. The proposal should be typed on both sides of 8 ½" X 11" paper. The City requests that all proposals be submitted on paper with no less than 30% postconsumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). Pages should be paginated. The proposal will be evaluated on the basis of its content, not length. **In addition, proposers should only submit an electronic copy of all documents submitted in response to this RFP.** Failure to comply with any of these instructions will not make the proposal non-responsive.

A. Proposal Format

1. Technical Proposal

a. Introductory Material

- **Cover Letter:** The Proposal Cover Letter form (Attachment A). Include a brief history of the firm, the overall organization of the firm, and statement of its goal and objectives. Include a statement indicating whether the proposer is proposing as a single entity or as a joint venture.
- **Table of Contents:** Provide a table of contents of the material contained in the proposal.
- **Summary:** Submit a brief statement of the salient features of the proposal, including approach, qualifications and nature of the proposed project team. No fee data may be included in this summary, and may result in the proposal being deemed non-responsive.

b. Experience

- i. Past Experience and past performance of the proposer:
 - a. The proposer must demonstrate the following qualifications:
 - i. Proposer shall have been actively and routinely engaged in the past five to ten years in responding to, and performing work in, emergency situations of varying magnitude, such as, but not limited to, building collapse, water or sewer main breaks, or weather-related destruction or damage.
 - ii. Proposer shall explain whether it has had experience developing and maintaining disaster readiness and mobilization plans; and if yes, if its existing plan can be tailored to the work of this contract.
 - iii. Proposer must identify prior project experience performing the types of work outlined in this RFP, including the dates of such contracts, client name and contact information, work location, and description of the work performed.
 - iv. Proposer must demonstrate revenue of at least \$1,000,000 for each year for the last two years.
 - b. The Proposer must submit an example of, or already existing, disaster readiness and mobilization plan.
 - c. The Proposer must provide a statement of experience and qualifications of the Proposer, including experience with local, state, or federal disaster situations.
- ii. Equipment/Facilities/Mobilization

- a. Provide a statement explaining specifically how the proposer intends to mobilize in an expedient and efficient manner, in the event an emergency Task order is issued to the proposer.

c. Key Personnel

For each title of key personnel listed in Attachment B the Proposer shall identify the individuals it will provide, throughout the term of the contract, to perform the required services. Such individuals must be employees of the proposer. The proposer may identify multiple individuals for each title; provided, however, it shall only identify those individuals it has the ability to provide. The proposal shall annex to Attachment B the resume of each individual, indicating their technical qualifications and expertise.

Any proposed key personnel provided by the proposer must satisfy the minimum requirements per title set forth in Section III(B) of this RFP.

d. Proposer's Capability

Submit a copy of the proposer's organization chart.

Demonstrate the organization capability of the proposer by completing Standard Form 330, as indicated below. **Please note that Standard Form 330 must be completed by the proposer even if the proposer will not be directly providing any design services. Standard Form 330 can be accessed by using the following link:** <https://www.gsa.gov/forms-library/architect-engineer-qualifications>

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

Part I, Section H

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

Part II

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

All project information must include the dollar value of the contract, and the year the project was completed or will be completed.

The proposer shall describe and provide the following:

- The firm's ability to provide personnel for the required on-call emergency services;
- The firm's ability to provide sufficient personnel in the event of multiple Task Orders;
- The firm's current and anticipated workload;
- Disclosure of all the firm's existing standby contracts, if applicable;
- Firm's plan to deliver the services required and the ability to respond to multiple events at different locations at the same time;

- The firm's ability to have, or be able to obtain subcontractors for, sufficient labor, materials and equipment and be able to mobilize labor, material and equipment on any site within two hours of receiving notice and must be able to perform a minimum of three emergency Task Orders; and
- Location of firm's offices and subcontractors' offices from which labor, material, and equipment will be deployed
- Provide a sample in the use of at least one digital data collection process (e.g., Esri Collector or something compatible)

e. Proposer's Approach

- Show examples of damage assessments of buildings, including structure and equipment, and their life protective systems impacted by a disaster.
- Prepare a sample DRMP that is tailored to a specific category of work in accordance with Article 3 of the Contract Agreement (Attachment O).

2. Payment for Task Order 1

A form for the submission of the Payment for Task Order 1 is included as Attachment C of the RFP. The Proposer must complete the Form as per the instructions in the Attachment and submit the Form in a separate sealed package. The proposer must also submit in the same envelope a Proposed Performance-Based Payment Structure. The Agency will consider proposals to structure payments in a different manner and reserves the right to select any payment structure that is in the City's best interest.

3. Acknowledgment of Addenda

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

The Acknowledgment of Addenda form (Attachment D) serves as the proposer's acknowledgment of the receipt of addenda to this RFP which may have been issued by the Agency prior to the Proposal Due Date and Time, as set forth in Section I (A), above. The proposer should complete this form as instructed on the form.

4. Standard Form 330

The Proposer must complete and submit a Standard Form 330, even if the proposer will not be directly providing design services. The proposer must complete all sections of the form in Part I. The form can be downloaded at <https://www.gsa.gov/forms-library/architect-engineer-qualifications>

B. Proposal Package Contents ("Checklist")

The Electronic Proposal Package should contain the following materials. Proposers should utilize this section as a "checklist" to assure completeness prior to submitting their proposal to the Agency:

1.

(1) Proposal Cover Letter Form (Attachment A)

(2) Technical Proposal

- oo Narrative
- oo References for the proposer and, if applicable, each sub-contractor
- oo Minimum Qualification Requirements [**IF APPLICABLE**] of this RFP. Include what documents must be submitted as proof of meeting the requirements. Proposals that fail to meet all of these requirements will be rejected.
- oo Resumes and/or Description of Qualifications for Key Staff Positions
- oo Organizational Chart
- oo Audit Report or Certified Financial Statement or a statement as to why no report or statement is available

(3) Acknowledgment of Addenda Form (Attachment D)

(4) Standard Form 330

2. A separate attachment labeled “Price Proposal” containing the Price Proposal.
 - Payment for Task Order 1 Form (Attachment C)
 - Proposed Performance-Based Payment Structure
3. A third attachment containing:
 - “Subcontractor Utilization Plan” (Attachment F, Schedule B, Part II) or;
 - Approved Waiver of Target Subcontracting Percentage (Attachment E, Schedule B, Part III) or;
 - “Subcontractor Utilization Plan” (Attachment F, Schedule B, Part II) and Approved ***Partial*** Waiver of Target Subcontracting Percentage (Attachment F, Schedule B, Part III)
4. All proposals must contain a fourth attachment named “Doing Business Data Form” containing a completed Doing Business Data Form (see Attachment I).
5. Your emailed response must contain:
 - (a) The proposer’s name and address, the Title and PIN # of this RFP and the name and telephone number of the Proposer’s Contact Person.
 - (b) The name, title and address of the Authorized Agency Contact Person.

SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures

All proposals accepted by the Agency/Department will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the Agency to be non-responsive will be rejected. The Agency's Evaluation Committee will evaluate and rate all responsive proposals based on the Evaluation Criteria prescribed below. Proposals submitted by a New York State or City certified-M/WBE shall receive a quantitative preference of 10% of the total technical points earned in the evaluation of the proposal. The Agency reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the Agency deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the Agency reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best programmatic, technical and price terms.

B. Evaluation Criteria

- | | |
|---|------------|
| • Demonstrated quantity and quality of successful relevant experience | 30% |
| • Quality of proposed approach | 20% |
| • Demonstrated level of organizational capability | 50% |

C. Basis for Contract Award

DOB will rank proposals by technical merit, and negotiate fair and reasonable prices with the three highest-ranked proposals. A contract will be awarded to the three highest ranked responsible proposer whose prices are fair and reasonable. An award will be made to the three vendors whose proposals are determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria which are set forth in this RFP. Contract award shall be subject to the timely completion of contract negotiations between the Department and the selected proposers.

SECTION VI - GENERAL INFORMATION TO PROPOSERS

A. Complaints. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007; contract@comptroller.nyc.gov, or at (212) 669-2323. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

B. Applicable Laws. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-0010 or at: <http://www.nyc.gov/html/mocs/ppb/html/home/home.shtml>.

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

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

E. Proposer Appeal Rights. Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.

F. Multi-Year Contracts. Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the contractor's performance is not satisfactory. The Agency will notify the contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the contractor will be reimbursed for those costs, if any, which are so provided for in the contract.

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

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

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

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

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

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

M. Charter Section 312(a) Certification. [IF APPLICABLE]

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

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

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

(Commissioner) (Agency Chief Contracting Officer)

Date

Message from the New York City Vendor Enrollment Center
Get on mailing lists for New York City contract opportunities!
Submit a NYC-FMS Vendor Application - Call 212/857-1680

Message from New York City's Department of Small Business Services

The Department of Small Business Services (SBS) offers One-on-One Technical Assistance to businesses that are interested in bidding on City contracts for the following goods and services: construction, construction related, standardized and architectural and engineering. If you plan on bidding on this or any other City contract, contact SBS to schedule an appointment. The Department of Small Business Services will meet with you to review your particular proposal or submission, and provide feedback and guidance to help you submit the best proposal possible.

To schedule One-on-One Technical Assistance, email techassist@sbs.nyc.gov and an SBS representative will contact you.

ATTACHMENT A

PROPOSAL COVER LETTER

RFP TITLE: _____

PIN #: _____

Proposer:

Name: _____

Address: _____

Tax Identification #: _____

Proposer's Contact Person:

Name: _____

Title: _____

Telephone #: _____

(Service Option)(Program Option)(Service Area)(Facility Site)(Other) Proposed: [IF APPLICABLE]

☐ _____ ☐ _____ ☐ _____

Certification of Compliance with Minimum Qualification Requirement(s) [IF APPLICABLE] [MOCS APPROVAL REQUIRED]

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

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

☐ Yes ☐ No

ATTACHMENT B
IDENTIFICATION OF KEY PERSONNEL

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

Key Personnel: Required titles of Key Personnel for the Project are indicated below. In this Attachment, the proposer shall identify the individuals it will assign to the Project for its entire duration as Key Personnel. The proposer is advised that submission in completed form of all information set forth below with respect to the proposed Key Personnel is MANDATORY. Failure to submit all such information in completed form will result in the automatic rejection of the proposal as non-responsive.

Resumes: The proposer shall submit a resume for each individual identified below. The resume shall detail the individual's managerial and technical qualifications, as well as his/her experience with similar projects.

Qualification Requirements: Qualification requirements for individuals assigned to the Project as Key Personnel are set forth in Section IIIB of the RFP.

- (1) Principal: Name of Proposed Candidate: _____
- (2) Project Engineer: Name of Proposed Candidate: _____
#
- (3) Senior Structural Engineer: Name of Proposed Candidate: _____
- (4) Junior Structural Engineer: Name of Proposed Candidate: _____

Are the Candidates currently employed by proposer? ____ Yes ____ No If the answer is No, the proposer must provide the certification set forth below, plus a proposed alternate candidate.

Name of Proposed Alternate Candidate: _____

The resume of the Proposed Alternate Candidate must be included in the technical proposal.

Information regarding the Candidate's current and/or projected assignment(s), including projects which have not yet been commenced, but for which a final selection has been made by the Entity/Agency:

Name of Entity or Agency: _____

Project Description: _____

Title: _____

Anticipated Completion Date: _____

Has the Candidate been included on any other proposals submitted by the proposer for which a final selection has not yet been made by the Entity/Agency? ____ Yes ____ No. If the answer is Yes, the proposer must provide an attachment listing all such proposals.

Certification: By signing this Attachment, the proposer certifies as follows: [The proposer shall check the appropriate line(s).]

____ All individuals identified as Key Personnel are currently employed by the proposer, except for the individual(s) identified below. (If applicable, the section below must be completed.)

____ The following individual(s) identified as Key Personnel is not currently employed by the proposer:

____ The proposer certifies that (1) it has entered into an agreement (written ____ or verbal ____) with the individual(s) identified above, and (2) in accordance with such agreement, the individual(s) has agreed to be employed by the proposer and assigned to the Project if the contract is awarded to the proposer.

(5) Affirmation: By signing this Attachment, the proposer affirms that (1) all information provided on this Attachment is true and accurate in all respects, and (2) if an award of contract is made to the proposer, it

will assign to the Project for its entire duration, the individuals identified in this Attachment as Key Personnel.

The proposer understands that (1) if an award of contract is made, the City was induced to make such award based upon the proposer’s affirmation that it will assign to the Project for its entire duration, the individuals identified in this Attachment as Key Personnel, and (2) failure to assign to the Project for its entire duration, the individuals identified in this Attachment as Key Personnel shall be considered a material breach of the Contract and grounds for termination for cause.

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

Name of Firm
(Full Business Name)

By: _____
Signature of Partner or Corporate Officer Title

Print Name Date

ATTACHMENT C
PAYMENT

PAYMENT FOR TASK ORDER #1

Year 1 – Payment	
Item	Annual Payment
Accepted DRMP	\$50,000
Tabletop Exercise	\$2,000
Scorecard Submission (\$150/monthly)	\$1,800
Minimum Year 1 Payment for Task Order #1:	\$53,800
*Planning Meetings (\$1000/each, up to 4/annually)	+\$4,000
*Pre-mobilization/Readiness Calls (\$550/each, up to 4/annually)	+\$2,200
Maximum Year 1 Payment for Task Order #1:	\$60,000

Years 2 – 5 – Payment	
Item	Annual Payment
Tabletop Exercise	\$2,000
Scorecard Submission (\$150/monthly)	\$1,800
Minimum Year 2 - 5 Payment for Task Order #1:	\$3,800
*Planning Meetings (\$1000/each, up to 4/annually)	+\$4,000
*Pre-mobilization/Readiness Calls (\$550/each, up to 4/annually)	+\$2,200
Maximum Year 2 – 5 Payment for Task Order #1:	\$10,000

**Indicates item that may or may not occur depending on contract activation and/or emergency incident.*

PAYMENT FOR TASK ORDERS FOR EMERGENCY RESPONSE WORK

- A. *Maximum Payment.* This is a requirements agreement. The maximum amount paid to the Contractor for Task Orders for Emergency Response Work will be set forth in the Task Order.
- B. *Basis for Payment.* Payment for Task Orders for Emergency Response Work will be made on a time-card basis. Hourly rates, which include profit and overhead, are as follows:

Title	Hourly Rate
Principal	
Project Engineer	
Senior Structural Engineer	
Junior Structural Engineer	

- C. *Requisitions for Payment.* Requisitions for payment may be submitted as the Work progresses, but not more than once monthly. Requisitions shall be in the form authorized by the Commissioner and shall set forth at a minimum: (1) the services performed during the period covered by the requisition, (2) the name, title, and hourly rate of each staff member assigned to the Task Order for Emergency Response Work; (3) the time performed on the project by each staff member assigned to the Task Order for Emergency Response Work; (4) the extended fee for each staff member assigned to the Task Order for Emergency Work (hourly rate x project hours), (5) any charges for out-of-pocket expenses, and (6) the total amounts for personal service and out-of-pocket expenses and the grand total requisition amount.
- D. *Resumes of Employees.* The Contractor shall submit resumes of all staff employed on a Task Order for Emergency Work showing that the resumes meet the required experience and educational requirements in the job descriptions in Exhibit A.
- E. *Reimbursable Expenses.* Reimbursement for expenses shall be billed at actual cost plus overhead. Overhead will initially be paid at 10% of the actual costs of expenses and will be subject to audit and reduction to reflect actual overhead costs.
- F. *Unsatisfactory Work.* All payments are contingent upon the Contractor's satisfactory performance of the required Work under a Task Order for Emergency Response Work. The Commissioner may withhold payment for any Work that he or she determines to be unsatisfactory upon notification to the Contractor of the deficiency. Such payment may be released upon the Contractor's satisfactory remediation of the defective work.
- G. *Amount of Payment.* For each month during which an employee in one of the titles listed above performs work on the Task Order for Emergency Response Work, the employee's services for that week shall be calculated as follows: Multiply the All Inclusive Hourly Rate applicable to the title by the number of billable hours worked by the employee during the invoice period.

Billable hours shall not include: (a) any hours during which the employee performs services for any other project, (b) any hours set forth on time sheets completed by the employee that have been allocated to any category or function other than services performed for the Task Order for Emergency Response Work, (c) without limitation, any hours compensated for other than direct technical labor including, but not limited to, vacation time, sick time, personal time, and holidays, performance of indirect administrative tasks, and any other time keeping category consistent with standard accounting practices.

ARTICLE 3: ECONOMIC PRICE ADJUSTMENT

A. *Economic Price Adjustment.* The Contractor warrants that the prices in this Agreement do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this Article 3. If the Contractor's proposal for the award of this Agreement included unit prices or hourly wages (including fringe benefits) or both, the City may allow for a reasonable adjustment in unit prices, hourly wages (including fringe benefits) or both once during each year of the Term, not including the first year of the Term, upon request of the Contractor provided that the Contractor adequately justifies (i) the need for such adjustment in unit prices, hourly wages (including fringe benefits), or both and (ii) the cost reasonableness of such adjustment. Such adjustment shall be subject to the following:

1. For hourly wages that are subject to the prevailing wage or living wage schedules promulgated by the Comptroller or hourly wages that are otherwise subject to mandatory adjustments pursuant to statute or regulation, the City may adjust the hourly wage rates set forth in the Agreement commensurate with the adjustments required by the applicable wage schedule, statute or regulation, as applicable to each wage rate, effective upon the first anniversary date of the Agreement and the first day of each renewal term.
2. For hourly wages that are not subject to the prevailing wage or living wage schedules promulgated by the Comptroller or otherwise subject to mandatory increases pursuant to statute or regulation, the City may adjust such hourly wage rates set forth in the Agreement commensurate with the Employment Cost Index for Professional, Specialty and Technical Occupations ("Employment Cost Index"), published by the U.S. Dept. of Labor, Bureau of Labor Statistics based on the annual average increase for the preceding year of the Term, effective upon the first anniversary date of the Agreement and the first day of each renewal term. If an increase in Employment Cost Index exceeds 5%, the adjustment made under this paragraph 2 will be capped at 5%.
3. For unit prices that are inclusive of wage rates and materials, the Contractor may submit a request for a price adjustment no more than once per year after the first year of the Term. The request shall include the Contractor's proposal for an adjustment to the unit prices to be negotiated along with supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal. Promptly after the Agency receives the request and the data set forth in the preceding sentence, the Agency and the Contractor shall negotiate a price adjustment in the unit prices, effective upon the first anniversary date of the Agreement and the first day of each renewal term. The aggregate of the increases in any unit price made under this clause shall not exceed 10 percent of the original unit price.

ATTACHMENT D: ACKNOWLEDGEMENT OF ADDENDA

EPIN 81019P0003

RFP TITLE: ON-CALL EMERGENCY BUILDING ASSESSMENT TEAMS

DIRECTIONS: COMPLETE PART I OR PART II, WHICHEVER IS APPLICABLE.

☐ **PART I: LISTED BELOW ARE THE DATES OF ISSUE FOR EACH ADDENDUM RECEIVED IN CONNECTION WITH THIS RFP/IFB:**

ADDENDUM #1, DATE _____, _____

ADDENDUM #2, DATE _____, _____

ADDENDUM #3, DATE _____, _____

ADDENDUM #4, DATE _____, _____

ADDENDUM #5, DATE _____, _____

ADDENDUM #6, DATE _____, _____

ADDENDUM #7, DATE _____, _____

ADDENDUM #8, DATE _____, _____

ADDENDUM #9, DATE _____, _____

ADDENDUM #10, DATE _____, _____

ADDENDUM #11, DATE _____, _____

ADDENDUM #12, DATE _____, _____

☐ **PART II: NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP/IFB.**

DATE: / /

PROPOSER NAME: _____

PROPOSER SIGNATURE: _____

Attachment E: NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. 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 contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise ("M/WBE") program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below.

The Contractor must comply with all applicable M/WBE requirements for this Contract.

Article I, Part A, below, sets forth provisions related to the participation goals for construction and professional services contracts. Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE program.

PART A PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The **Target Subcontracting Percentage** applicable to this Contract is set forth on Schedule B, Part I to this Contract (see Page 1, line [1]).

The "**Target Subcontracting Percentage**" is the percentage of the total Contract which Agency anticipates that the prime contractor for this Contract would in the normal course of business award to one or more subcontractors for amounts under \$1 million for construction and professional services. A prospective contractor may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below. To apply for the a full or partial waiver of the **Target Subcontracting Percentage**, a prospective contractor must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at lewong@buildings.nyc.gov or via facsimile at (212) 566-4090. Bidders/proposers who have submitted requests will receive a response by no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

2. The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract (see Page 1, line (2) and/or line (3)).

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under \$1million.

3. If **Subcontractor Participation Goals** have been established for this Contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under \$1 million, Contractor shall be subject to the **Subcontractor Participation Goals**, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

4. If **Subcontractor Participation Goals** have been established for this Contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under \$1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the **Target Subcontracting Percentage**, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Part A, Section 10 below.

THE BIDDER/PROPOSER MUST FULLY COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). BIDS/PROPOSALS WHICH DO NOT INCLUDE A COMPLETED SUBCONTRACTOR UTILIZATION PLAN WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE SUBCONTRACTOR UTILIZATION PLAN (SCHEDULE B, PART II) INDICATES THAT THE BIDDER/PROPOSER DOES NOT INTEND TO AWARD THE TARGET SUBCONTRACTING PERCENTAGE, THE BID/PROPOSAL WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS THE AGENCY HAS GRANTED A WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE (SCHEDULE B, PART III).

5. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, within 30 days of issuance by Agency of a notice to proceed, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. In the event that the Contractor's selection of a subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

6. M/WBE firms must be certified by DSBS in order for the Contractor to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/getcertified, by emailing DSBS at MWBE@sbs.nyc.gov, by calling the DSBS certification hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William St., New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

7. Where a Subcontractor Utilization Plan has been submitted, the Contractor shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); 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. The Contractor shall also submit, along with its voucher for final payment, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

8. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Part A, Section 11 below.
9. Where a Subcontractor Utilization Plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.
10. Pre-award waiver of **Target Subcontracting Percentage**. Agency may grant a full or partial waiver of the **Target Subcontracting Percentage** to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts for under one million dollars represented by the **Target Subcontracting Percentage**. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.
11. Modification of Subcontractor Utilization Plan. A Contractor may request a modification of its Subcontractor Utilization Plan (**Subcontractor Participation Goals**) after award of this Contract. The Agency may grant such request if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Subcontractor Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:
- (a) The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
 - (b) The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
 - (c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;
 - (d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the Subcontractor Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
 - (e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
 - (f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

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

(h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.
Agency's M/WBE officer shall provide written notice to the Contractor of the determination.

12. If **Subcontractor Participation Goals** have been established for this Contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B **MISCELLANEOUS**

1. The Contractor shall take notice that, if this solicitation requires the establishment of a Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.
2. Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.
4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.
5. By submitting a bid or proposal the Contractor hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals**.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.

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

(a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;

(b) revoking the Contractor's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Contractor is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Contractor to be in breach of Contract;

(f) withholding payment or reimbursement;

(g) determining not to renew the Contract;

(h) assessing actual and consequential damages;

(i) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;

(j) exercise rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or

(k) take any other appropriate remedy.

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

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

6. The Contractor's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the agency shall, after consultation with the city chief

ATTACHMENT F

SCHEDULE B – M/WBE Utilization Plan

Part I: M/WBE Participation Goals

Part I to be completed by contracting agency

Contract Overview

APT E- Pin #

Project Title/ Agency

PIN #

Bid/Proposal

Response Date

Contracting Agency

Agency Address

City

State

NY

Zip Code

Contact Person

Title

Telephone #

Email

Project Description (attach additional pages if necessary)

M/WBE Participation Goals for Services

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

Prime Contract Industry:

Group	Percentage	
Unspecified	%	
or		
Black American	%	
Hispanic American	%	
Asian American	%	
Women	%	
Total Participation Goals	%	Line 1

- SCHEDULE B - Part II: M/WBE Participation Plan

Part II to be completed by the bidder/proposer.

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

Section I: Prime Contractor Contact Information				
Tax ID # _____	FMS Vendor ID # _____			
Business Name _____	Contact Person _____			
Address _____				
Telephone # _____	Email _____			
Section II: M/WBE Utilization Goal Calculation: Check the applicable box and complete subsection.				
PRIME CONTRACTOR ADOPTING AGENCY M/WBE PARTICIPATION GOALS				
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Agency M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal Value		Agency Total Participation Goals (Line 1, Page 1)	Calculated M/WBE Participation Amount
		X	=	\$ Line 2
PRIME CONTRACTOR OBTAINED PARTIAL WAIVER APPROVAL: ADOPTING MODIFIED M/WBE PARTICIPATION GOALS				
<input type="checkbox"/> For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Modified M/WBE Participation Goals. Calculate the total dollar value of your total bid that you agree will be awarded to M/WBE subcontractors for services and/or credited to an M/WBE prime contractor or Qualified Joint Venture. Please review the Notice to Prospective Contractors for more information on how to obtain credit for M/WBE participation.	Total Bid/Proposal Value		Adjusted Participation Goal (From Partial Waiver)	Calculated M/WBE Participation Amount
		X	=	\$ Line 3

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

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

☐ MBE ☐ WBE

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

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

Section IV: General Contract Information

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

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

✓ Scopes of Subcontract Work

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

Section V: Vendor Certification and Required Affirmations

I hereby:

1) acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York (“Section 6-129”), and the rules promulgated thereunder;

2) affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;

3) agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;

4) agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such goals are modified by the Agency; and

5) agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such goals are modified by the Agency, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature	_____	Date	_____
Print Name	_____	Title	_____

ATTACHMENT G
WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER

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

Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:

how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and the rights and remedies afforded to its employees under New York City Administrative Code sections 7-

805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

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

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

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

ATTACHMENT G (CONTINUED)

NOTICE TO BIDDERS, PROPOSERS, CONTRACTORS, AND RENEWAL CONTRACTORS

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

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

LOCAL LAW NO. 30-2012 REQUIRES A CONTRACTOR TO PROMINENTLY POST INFORMATION EXPLAINING HOW ITS EMPLOYEES CAN REPORT ALLEGATIONS OF FRAUD, FALSE CLAIMS, CRIMINALITY, OR CORRUPTION IN CONNECTION WITH A CITY CONTRACT TO CITY OFFICIALS AND THE RIGHTS AND REMEDIES AFFORDED TO EMPLOYEES FOR WHISTLEBLOWING ACTIVITY. LOCAL LAW NO. 30-2012 IS CODIFIED AT SECTION 6-132 OF THE NEW YORK CITY ADMINISTRATIVE CODE.

ATTACHMENT H
IRAN DIVESTMENT ACT COMPLIANCE RIDER

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

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

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

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

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

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

BIDDER'S CERTIFICATION

- Dated:

TITLE

Notary Public State of

ATTACHMENT I
SUB-CONTRACTING COMPLIANCE NOTICE

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

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

Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Agency declaring the Contractor in default of the Contract and will subject

Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City. For construction contracts, the provisions of Article 15 of the Standard Construction Contract shall govern the issue of liquidated damages. Contractor hereby agrees to these provisions.

ATTACHMENT J
HIRING AND EMPLOYMENT RIDER:
HIRENYC AND REPORTING REQUIREMENTS

Introduction

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

HireNYC Requirements

A. Enrollment

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

B. Job Posting Requirements

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

After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process and will provide clear instructions as to when, where, and how interviews will take place.

HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.

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

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

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

C. Breach and Liquidated Damages

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

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

Audit Compliance

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

Other Reporting Requirements

The Contractor shall report to the City, on a monthly basis, all information reasonably requested

by the City that is necessary for the City to comply with any reporting requirements imposed by law or rule, including any requirement that the City maintain a publicly accessible database. In addition, the Contractor agrees to comply with all reporting requirements imposed by law or rule, or as otherwise requested by the City.

Construction Requirements

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

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

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

Federal Hiring Requirements

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

- Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for work involving any Construction trade.

ATTACHMENT K
PAID SICK LEAVE LAW CONTRACT RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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

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

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12- month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage.

Employers are not required to provide more than forty hours of sick time to an employee in any Year. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than

forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

ATTACHMENT K (CONTINUED)

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

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

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

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

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

Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

ATTACHMENT K (CONTINUED)

- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law

Retaliation Prohibited

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

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

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

Records

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

Enforcement and Penalties

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

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

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

ATTACHMENT L
DOING BUSINESS DATA FORM (To be inserted)

ATTACHMENT M
FEDERAL TERMS AND CONDITIONS

The Federal Terms and Conditions are comprised of three parts, as follows:

PART 1: The Uniform Federal Contract Provisions Rider, which is applicable to all Work, except for Task Order #1 Work

- a. Exhibit 1 to the Uniform Federal Contract Provisions Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.
- b. Exhibit 2 to the Uniform Federal Contract Provisions Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.

PART 2: The FEMA Rider, which is applicable to all Work, except for Task Order #1 Work

PART 3: The CDBG-DR Rider, which is applicable to all Work (except for Task Order #1 Work) unless otherwise specified by the Ordering Agency in a Task Order

- a. Exhibit 1 to the CDBG-DR Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.
- c. Exhibit 2 to the CDBG-DR Rider, is applicable Construction Work, as defined in Part 1, section A(4), below.

PART 1

UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

(Adapted for the On-Call Emergency Contracts Program in January 2019)

A. Definitions. As used in this Rider:

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

B. Reserved.

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

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

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and
- (c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.
- (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(7) *Solid Waste Disposal Act*. Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 and

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.

(9) *Records Retention.* See Article 3 of Exhibit E.

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

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

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

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

(12) *Intangible Property.* Provisions governing intangible property are set forth in Article 4, Exhibit E.

D. Special Provisions for Construction Contracts and Construction Related Contracts.

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

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

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation², in

² The Davis-Bacon Act is generally not applicable to FEMA grants to the City for disaster recovery and mitigation construction work and so it is unlikely that it will apply to the Task Order Work. However, the Davis-Bacon Act is applicable to CDBG-DR grants to the City and, sometimes, the City uses CDBG-DR funds to supplement FEMA grants. Contractors must consult with the City about the source of federal funding for construction work performed under

Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.

- b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
- c. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but “permissible” salary deductions.
- d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete

Emergency Response Task Orders involving construction Work and the applicability of Davis-Bacon Act requirements to such Work.

detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

- (2) *Equal Employment Opportunity*. Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

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

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

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

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

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

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

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

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained

identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

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

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

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

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

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

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

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

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

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

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of

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

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

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

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

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

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

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was

performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

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

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

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

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

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

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

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

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under

this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

E. RESERVED.

FEDERAL EXHIBIT 1

NOTICE TO BIDDERS

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

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

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

Goals and Timetables for Minorities

		<u>Goal</u>	
<u>(percent)</u>	<u>Trade</u>		
	Electricians	9.0	to
10.2			
	Carpenters	27.6	to
32.0			
	Steamfitters	12.2	to
13.5			
	Metal Lathers	24.6	to
25.6			
	Painters	28.6	to
26.0			
	Operating Engineers	25.6	to
26.0			
	Plumbers	12.0	to
14.5			
	Iron Workers (structural)	25.9	to
32.0			
	Elevator Constructors	5.5	to
6.5			
	Bricklayers	13.4	to
15.5			

28.0	Asbestos Workers	22.8	to
7.5	Roofers	6.3	to
23.0	Iron Workers (ornamental)	22.4	to
27.0	Cement Masons	23.0	to
20.0	Glazers	16.0	to
18.0	Plasterers	15.8	to
22.5	Teamsters	22.0	to
15.5	Boilermakers	13.0	to
17.5	All Other	16.4	to

Goals and Timetables for Women

From April 1, 1980 until the present
6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved Construction.

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

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the

subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

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

EXHIBIT 2
Federal Labor Standards Provisions (Non-Davis Bacon)
Federal Emergency Management Agency
(Adapted for the On-Call Emergency Contracts Program in January 2019)

Applicability: The Project or Program to which the construction Work covered by this Agreement pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Agreement pursuant to the provisions applicable to such Federal assistance.

A. Compliance with the Copeland “Anti-Kickback” Act.

1. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
2. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause in paragraph 1 above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all of these contract clauses.
3. **Breach.** A breach of the contract clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

B. Compliance with the Contract Work Hours and Safety Standards Act. The provisions of this Section B are applicable where the amount of the prime contract exceeds \$100,000.

1. **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this Section B, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
 3. **Withholding for unpaid wages and liquidated damages.** The City of New York shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
 4. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this Section B and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section B.
- C. **Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.
1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.
3. The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any subcontractor as FEMA or the Secretary of Labor shall direct as a means of enforcing such provisions.

PART 2

FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) RIDER

(Adapted for the On-Call Emergency Contracts Program in January 2019)

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

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

or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the Agreement.

10. False Claims. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.

PART 3

CDBG-DR Rider

(Adapted for the On-Call Emergency Contracts Program in January 2019)

FEDERAL REGISTER NOTICES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Register Notices applicable to the use of CDBG-DR Funds are typically issued by HUD after a disaster for which HUD grant funds will be provided. The Notice(s) may require changes to this Rider.

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ARTICLE 1. DEFINITIONS

As used in this CDBG-DR Rider:

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

(b) “Agency” means the Contracting Agency, the Ordering Agency, or both.

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

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

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

(f) “Contractor” means the entity executing this Agreement, other than the City.

(g) “Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds \$5,000.

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

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

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

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

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

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

[Applicable to Contractors and Subrecipients]

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

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

ARTICLE 3. LABOR REQUIREMENTS

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

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

be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

2. The parties to this Agreement agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this Agreement, the parties to this Agreement certify that they are under no contractual or other impediments that would prevent them from complying with the Part 135 regulations.
3. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
4. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any Subcontractor where the Contractor has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the Agreement is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
6. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.

7. With respect to work performed in connection with Section 3 covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
8. The Contractor agrees to submit, and shall cause its subcontractors to submit, quarterly reports to the Agency detailing the number of new employees hired, the number of new Section 3 employees hired, and any affirmative efforts made to direct hiring efforts to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing during the previous quarter.

(b) ***The Davis-Bacon Act (40 U.S.C. §§ 3141 et seq.)***. In Construction contracts involving an excess of \$2000, unless exclusively in connection with the rehabilitation of residential property containing fewer than 8 units, the Contractor shall pay all laborers and mechanics at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the Agency. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7, which enforce statutory labor standards provisions. **This provision supersedes section D(1)(a) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**

(c) ***Overtime***. In Construction contracts involving an excess of \$2000, and subject to the exception in 24 CFR section 570.603 (regarding the rehabilitation of residential property containing less than 8 units), Contractor shall comply with sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701 *et seq.*), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but

shall be additionally liable to the United States for liquidated damages. **This provision supersedes section D(1)(b) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.**

ARTICLE 4. RESERVED

ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS

This Agreement is subject to:

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

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

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

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

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

Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

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

ARTICLE 7. UNIFORM RELOCATION ASSISTANCE

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

ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS

Pursuant to 2 CFR § 2400.101 and 24 CFR § 85.1, Contractors is subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (commonly referred to the “Super Circular”), as applicable.

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

- (a) Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor must be returned to the City.

The Contractor agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor shall return such income to the City’s Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of Community Development Block Grant funds. Alternative program requirements concerning the definition of “program income” may be set forth in notices issued by HUD related to the funding.

- (b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and readily accessible.
- (c) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor's chief fiscal officer or its insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount equal to cash advances from the City. If the bond is cancelled or coverage is substantially reduced, the Contractor shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor until it has received assurance that adequate coverage has subsequently been obtained.
- (d) No money under this Agreement shall be disbursed by the Agency to any Contractor except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR Part 58.

ARTICLE 10. RECORDS AND AUDITS

- (a) The Contractor shall maintain records in accordance with the requirements elsewhere in this Agreement.
- (b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information, as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:
 - (i) Quarterly Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Quarterly Performance Reports.
 - (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased equipment.

- (c) At any time during normal business hours and as often as the City, the Contracting Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

ARTICLE 11. SUBCONTRACTORS

- (a) The provisions of this Agreement, including but not limited to this CDBG-DR Rider, shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor. The Contractor shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor.
- (b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor.
- (c) The Work furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor, and the Contractor shall remain responsible therefor.

ARTICLE 12. CONFLICTS; EXHIBITS

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

ARTICLE 13. RESERVED.

ARTICLE 14. RESERVED.

ARTICLE 15. RESERVED.

ARTICLE 16. RESERVED

ARTICLE 17. RESERVED.

ARTICLE 18. PERFORMANCE REQUIREMENTS AND REMEDIES

Contractor shall be subject to any performance requirements and remedial provisions and/or liquidated damages set forth in this Agreement. Contractor acknowledges that negative performance evaluations may impair its ability to win future contracts with the City as follows: Under City Procurement Policy Board (PPB) Rules section 4-01, Contractor is subject to performance evaluations at least once annually. The City shall enter such performance evaluations into the PASSPort system or a system that replaces PASSPort. To the extent allowed by the PPB Rules, such performance evaluations shall be considered by the City in:

(1) making a determination of the Contractor's responsibility or non-responsibility in future City procurements, under PPB Rule section 2-08(g)(1)(ii) and

(2) deciding to renew or not to renew the Agreement, under PPB Rule section 4-04(c)(10).

FED. EXHIBIT 1

NOTICE TO BIDDERS

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

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth above.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals and Timetables for Minorities

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

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved Construction.

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

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

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

ATTACHMENT N

INDEMNIFICATION AND INSURANCE

FOR THE FOLLOWING CATEGORIES

Category #8: Environmental Testing Services

Category #11: Building Assessment Teams (Engineers)

ARTICLE 1: PROTECTION OF PERSONS AND PROPERTY, INDEMNIFICATION, AND NOTIFICATION OF ACCIDENTS

A. Protection of Persons and Property:

1. The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its Subcontractor's operations under this Agreement.
2. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by negligence, an intentional tortious act or omission, or failure to comply with this Agreement or Law by the Contractor and/or its Subcontractors.

B. Indemnification:

1. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials, employees, and agents ("Indemnitees"), against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the Indemnitees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act of commission or omission, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by the Contractor, the Indemnitees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

2. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the Indemnitees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by the Contractor, the Indemnitees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

3. The Contractor's obligation to indemnify, defend and hold harmless the Indemnitees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees to avail themselves of the benefits of such insurance.

C. Notification of Accidents:

1. If there is any injury, offense, loss or damage to person, property, or Work or any accidents arising out of the operations of the Contractor and/or its Subcontractors under this Agreement, the Contractor shall comply with the following notification requirements:

a. The Contractor shall make a full and complete report in writing to the Ordering Agency within three Days after it becomes aware of or reasonably should be aware of such injury, offense, loss, damage, or accident.

b. The Contractor shall notify insurance carriers as required in Article 2(F)(5), below.

D. Actions By or Against Third Parties:

1. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the Indemnitees without additional compensation all assistance that the Indemnitees may reasonably require of the Contractor.

2. The Contractor shall report to the Contracting Agency in writing within five Business Days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

E. Withholding of Payments:

1. If any claim is made or any action is brought against the Indemnitees for which the Contractor may be required to indemnify the Indemnitees pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

2. If any City property is lost or damaged as set forth in Article 1(A)(2), above, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.
3. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Article 2, below, has accepted the City's tender of the claim or action without a reservation of rights.
4. The City may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.
5. The rights and remedies of the City provided for in this Article 1(E) are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

ARTICLE 2: INSURANCE

- A. Agreement to Insure: The Contractor shall maintain the insurance specified. Wherever this Article 2 requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.
- B. Workers' Compensation, Employer's Liability, and Disability Benefits Coverage:
 1. The Contractor shall maintain workers' compensation insurance, employers' liability insurance, and disability and paid family leave benefits coverage in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement. The workers' compensation insurance policy shall include a waiver of subrogation in favor of the City of New York.
 2. Within 10 Days of award of the Agreement, as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of its workers' compensation insurance and disability benefits and paid family leave coverage (or proof of a legal exemption) to the Contracting Agency. ACORD forms are not acceptable proof. The following forms are acceptable:
 - a. Exemption from N.Y. workers' compensation insurance and/or disability and paid family leave benefits insurance.
 - i. Form CE-200 – Certificate of Attestation of Exemption (available at http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)
 - b. Workers' compensation certificate of insurance
 - i. Form C-105.2 – Certificate of Workers' Compensation Insurance
 - ii. Form U-26.3 – State Insurance Fund Certificate of Workers' Compensation Insurance
 - iii. Form SI-12 – Certificate of Workers' Compensation Self-Insurance
 - iv. Form GSI-105.2 – Certificate of Participation in Workers' Compensation Group Insurance

- c. Disability and paid family leave benefits certificate of insurance
 - i. Form DB-120.1 – Certificate of Disability and Paid Family Leave Benefits Coverage
 - ii. Form DB-155 – Certificate of Disability Benefits Self-Insurance
- C. Other Insurance:
 - 1. Commercial General Liability Insurance: The Contractor shall maintain Commercial General Liability Insurance covering claims for property damage and/or injury, including death arising from any operations under or in connection with this Agreement. Such insurance must:
 - a. Have limits of at least \$2,000,000 per occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 policy aggregate and \$2,000,000 products and completed operations aggregate;
 - b. Be at least as broad as that provided by the latest edition of Insurance Services Office (“ISO”) Form CG 00 01;
 - c. Be “occurrence” based rather than “claims-made”;
 - d. Include the Indemnitees and any other entity that may be listed in the Task Order as an Additional Insured. The additional insured endorsements or policy provisions must be at least as broad as the latest edition of ISO Form CG 20 26;
 - e. Include an endorsement that is at least as broad as the latest edition of ISO Form CG 20 01 (Primary and Noncontributory – Other Insurance Condition);
 - f. Not include exclusions or limitations of the following coverage attributes:
 - i. contractual liability coverage (including the tort liability of another assumed in a contract) insuring the contractual obligations of the Contractor;
 - ii. employers’ liability coverage for liability assumed by the Contractor under an “insured contract”;
 - iii. coverage for claims arising under New York Labor Law;
 - iv. the applicability of commercial general liability coverage to the Indemnitees as additional insured in respect of liability arising out of claims by employees of the Contractor; and
 - v. explosion, collapse, and underground (XCU).
 - 3. Commercial Automobile Liability Insurance: The Contractor shall maintain Commercial Automobile Liability Insurance in the amount of \$1,000,000 per accident (combined single limit), covering all owned, non-owned, leased, and hired vehicles used in connection with this Agreement. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as the MCS 90 endorsement.
 - 4. Professional Liability Insurance: Contractor must maintain Professional Liability Insurance in the amount of at least \$2,000,000 per claim and \$2,000,000 policy aggregate. The policy must cover liability arising out of the negligent performance of professional services or caused by a negligent error, omission or act of the Contractor or anyone employed by the Contractor. The Contractor shall ensure that all Subcontractors at any tier providing professional services under this Agreement for which Professional

Liability Insurance or errors and omissions insurance is reasonably commercially available maintain such insurance.

If the Professional Liability insurance coverage lapses or is cancelled within three (3) years following completion of services, the named insured must obtain tail coverage, or an extended reporting period endorsement, effective on cancellation or termination of such insurance, unless a new policy is secured with a retroactive date prior to the commencement of services.

5. Contractor's Pollution Liability Insurance: For Category #8, the Contractor shall maintain Contractor's Pollution Liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless waived by the Contracting Agency. Such coverage must be on a per occurrence basis covering the Indemnitees as additional insureds.

D. General Requirements for Insurance Coverage and Policies:

a. Unless otherwise stated, all insurance required by Article 2(C) must:

a. Be maintained with companies that may lawfully issue the required policy;

b. Have an A.M. Best rating of at least A-/VII, a Standard & Poor's rating of at least A, a Moody's Investor Service rating of at least A3, or a Fitch Ratings rating of at least A- unless prior written approval is obtained from the City Corporation Counsel; and

c. Be primary to, and non-contributing with, any insurance or self-insurance maintained by the Indemnitees with the exception of professional liability insurance.

b. The Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the Indemnitees are an insured under the policy.

c. The Indemnitees' limits of coverage for all types of insurance required pursuant this Agreement shall be the greater of (i) the minimum limits set forth in this Agreement or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

F. Proof of Insurance:

1. For all types of insurance required by the Agreement, the Contractor shall provide proof of insurance in accordance with this Exhibit C within 10 Days of award to the Contracting Agency and, again, to the Ordering Agency upon award of a Task Order for Emergency Response Work.

2. For policies provided pursuant to Article 2(C), the Contractor shall submit one or more certificates of insurance on ACORD forms or other forms reasonably acceptable to the Commissioner. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to the Agreement that the Indemnitees (and any other entity listed in the Task Order) is an Additional Insured; and (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number). All such Certificates of Insurance shall be accompanied by the required additional insured endorsements and, if applicable, loss payee endorsements, and either a duly executed "Certification by Insurance Broker or Agent" in the form attached to this Exhibit C or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier.

3. Documentation confirming renewals of insurance shall be submitted to the Contracting Agency at least 10 Days prior to the expiration date of coverage of policies

required under this Agreement. Such proofs of insurance shall comply with the requirements of this Exhibit C.

4. The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Exhibit C upon the demand for such policy by the Contracting Agency or the City Corporation Counsel.

G. Operations of the Contractor:

1. The Contractor shall not commence the Work unless and until all required proof has been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of proof does not excuse the Contractor from securing insurance consistent with all provisions of this Exhibit C or of any liability arising from its failure to do so.

2. The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to perform Work only during the effective period of all required coverage.

3. If any of the required insurance policies lapse, are revoked, suspended, cancelled or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Commissioner of the Ordering Agency. Upon quitting the Site, except as otherwise directed by the Commissioner of the Ordering Agency, the Contractor shall leave all plant, materials, equipment, tools, and supplies on the Site. Task Order completion time shall continue to run during such periods and no extensions of time will be granted. The Commissioner of the Contracting Agency may also declare the Contractor in default for failure to maintain required insurance.

4. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 2 shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner of the Contracting Agency and the New York City Comptroller, ATTN: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Article 2.

5. Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article 2, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to the Contractor's own employees) as soon as practicable but no later than 10 Days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials, employees, and agents, as Insured as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

6. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 2, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

H. Subcontractor Insurance: If the Contractor requires any Subcontractor(s) to maintain insurance covering the Contractor as additional insured, the Contractor shall also require the Subcontractor to cover the Indemnitees as additional insured. For commercial general liability insurance, the additional insured endorsement must be at least as broad as ISO Form CG 20 26.

I. Notice: Wherever reference is made in the Agreement or this Article 2 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address provided for notices.

J. Waiver: Apart from claims covered by Professional Liability Insurance, the Contractor waives all rights against the Indemnitees, for any damages or losses that are covered under any insurance required under this Article 2(C) (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its employees, agents, or Subcontractors.

K. Self-Insurance Programs: If the Contractor utilizes a self-insurance program to satisfy any of the requirements of this Article 2, the Contractor shall disclose such self-insurance program and ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article 2, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

L. Materiality/Non-Waiver: The Contractor's failure to secure policies in complete conformity with this Article 2, or to give an insurance company timely notice of any sort required in this Agreement or to do anything else required by this Article 2 shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

M. Other Remedies: Insurance coverage provided pursuant to this Exhibit C or otherwise shall not relieve the Contractor of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Agreement or Law.

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

(1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

(2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK

CERTIFICATION BY INSURANCE BROKER OR AGENT

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

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

[Signature of authorized official, broker, or agent]

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

ATTACHMENT O

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____ (the “Agreement”), by and between the City of New York (the “City”) acting by and through the Department of [Name] (the “Agency”) located at [Address] and _____ (the “Contractor”), located at _____.
(The City and the Contractor may be referred to collectively as the “Parties” and singularly as a “Party”).

ARTICLE 1: BACKGROUND

- A. The City desires to award contracts in advance for emergency service contracts to support the City’s needs to respond to natural or man-made disasters that impact any borough or section of New York City.
- B. In 2016, the City established the On-Call Emergency Contract Program to procure construction-related task-order contracts for disaster recovery and such contracts are scheduled to expire in November 2020.
- C. The City desires to expand the On-Call Emergency Contract Program in 2020 to engage contractors to provide the following goods, services, and construction on a requirements basis:
 - Category #1: Critical Public Building Restoration;
 - Category #2: Construction Services for Temporary Restoration of Housing;
 - Category #3: Construction Support for Urban Search and Rescue;
 - Category #4 and #5: Debris Removal, including Marine Transportation;
 - Category #6: Medical Space and Sheltering;
 - Category #7: Emergency Citywide Information Technology (IT) Support and Geographic Information Systems (GIS) Services;
 - Category #8: Environmental Testing Services;
 - Category #9: Supervision, Management and Administrative Services;
 - Category #10: Building Demolition;
 - Category #11: Building Assessment Teams;
 - Category #12: Emergency Transportation Contracts;
 - Category #13: Ground Support;
 - Category #14: Base Camp;
 - Category #15: Temporary Laborers – Disaster Response Unskilled Labor;

- Category #16: Environmental Remediation Services; and
- Category #17: Construction Services for Temporary Restoration of Housing - Multifamily

- D. New York City Emergency Management (“NYCEM”) is coordinating the City’s On-Call Emergency Contract Program.
- E. The On-Call Emergency Contract Program contracts are part of the City’s ability to respond quickly and effectively, but the City may use any number of methods to provide necessary and essential services in the event of an emergency.
- F. The Agency issued [an invitation for bids or a request for proposals] for a multiple-award task order contract in accordance with New York City Procurement Policy Board (“PPB”) Rule § [3-02(t) or 3-03(j)] and the City Chief Procurement Officer approved a total contract term in excess of three years in accordance with PPB Rule § [3-02(t)(3) or 3-03(j)(3)].
- G. Such solicitation sought contractors with scalable capability and resources (e.g., facilities, labor, management, equipment, logistics, etc.) to manage all types of emergencies.
- H. The Agency awarded the Agreement to the Contractor based upon, and in consideration, among other things, of its representation that it will perform the required services in a timely manner and in compliance with federal funding requirements.

ARTICLE 2: TERM

- A. *Registration.* This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328. Such registration requirement shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of funds by the City.
- B. *Commencement Date.* This Agreement shall commence upon July 1, 2020. This date shall be known as the “Commencement Date.”
- C. *Initial Term.* The Agreement’s initial term shall expire two years after the Commencement Date, unless earlier terminated in accordance with the terms of this Agreement.

- D. *Options to Renew.* The City has the right to renew this Agreement for up to three, one-year terms, in accordance with PPB Rule § 4-04 upon substantially the same terms as contained in this Agreement.
- E. *Effect of Open Task Order on Term.* If Work on a Task Order for Emergency Response Work commences prior to the Agreement's expiration (including, on the last Day of this Agreement), the Contractor shall continue Work on the Task Order (including any Supplementary Task Orders relating thereto) for Emergency Response Work and all the terms of this Agreement shall apply.
- F. *Definition of "Term".* The initial term, along with any renewal terms described in Article 2(D), shall be known as the "Term."
- G. *Extensions of Time for Performance.* PPB Rule section 4-03 shall govern extensions of time for performance in addition to provisions elsewhere in this Agreement.

ARTICLE 3: SCOPE OF WORK;
DISASTER READINESS AND MOBILIZATION PLAN

- A. *Scope of Work.* The Contractor shall perform the Scope of Work set forth in Exhibit A and as further described in any Task Orders.
- B. *Task Order #1.* Upon the Agency's issuance of Task Order #1 the Contractor shall prepare and submit a Disaster Readiness and Mobilization Plan (DRMP) to the Agency within the time set forth in the Task Order. Work under Task Order #1 will also include attendance at up to four planning meetings per year, attendance at one table top exercise per year, up to four mobilization/readiness calls per year, and monthly "Score Card" updates. Payment for such Work is set forth in Exhibit B and additional details about the requirements will be provided in Task Order #1 itself. The City anticipates that Task Order #1 will be the first Task Order issued. However, it is possible that an emergency will arise prior to the issuance of Task Order #1 and, therefore, the City may issue a Task Order for Emergency Response Work that precedes Task Order #1.
- C. *Contents of Disaster Readiness and Mobilization Plan.* The DRMP shall describe the Contractor's proposed course of action if the City issues it a Task Order for Emergency Response Work to perform Work described in Exhibit A. Contractors are expected to be as self-sufficient as possible including, but not limited to, providing for the identification, scheduling, transportation, lodging, and feeding of their personnel, Subcontractors, and agents, and securing and maintaining their own supply chain, staging areas, and permits. The DRMP shall include the following at a minimum:

1. A list and brief description of assets and staffing for emergencies for which the City has notice (e.g., a hurricane) and for which the City has no notice (e.g., a terrorist attack) that could trigger a need for the Work described in Exhibit A. For notice events, the Contractor shall provide such list and description for intervals of 96, 72, 48, 24, 12, 8, and 4 hours to the Agency.
 2. A list of potential Subcontractors, with the information required in Article 9(C), below, to the extent that it is available on the date that Task Order #1 is issued.
 3. A proposed response to each of the listed disaster scenarios that includes:
 - a. A description of the Contractor's recovery protocols;
 - b. A list of points of contact;
 - c. The Contractor's staffing plan, including requirements for each staff member (e.g., housing and travel);
 - d. A list of the equipment and materials needed and the potential source of such equipment and materials, in addition to potential obstacles to obtaining such equipment and materials in emergency circumstances; and
 - e. The Contractor's protocols with respect to risk management and the insurance that it maintains (e.g., for Categories #1-5, #10, and #16, how will it comply with the requirement that the aggregate of Commercial General Liability insurance be provided on a per project basis; what insurance coverage does it expect its Subcontractors to maintain).
 4. A list of existing contracts with the City that indicates for each contract the start and end date, the owning agency, the dollar amount and the scope of work.
 5. If the Contractor's Scope of Work for this Agreement includes construction Work, a sample Noise Mitigation Plan .
- D. *Review and Approval of DRMP.* The DRMP shall be subject to the approval of the Agency. The Agency may consult with a Category 9 Contractor about the approval or requests for revision. If directed by the Agency, the Contractor shall cooperate with the Category 9 Contractor with respect to its review of the DRMP. The City intends to consult with the Category 9 Contractor on DRMPs on the following categories of Work: Category #1, #2, #3, #4, #5, #8, #10, #11, #13, #16, and #17, but the City may consult with the Category 9 Contractor on additional categories of Work.
- E. *Revisions and Updates to DRMP.* The City may require the Contractor to revise the DRMP as a condition of approval of the DRMP. The Contractor shall notify the Agency and NYCEM within 48 hours when a point of contact changes. During the Term of this Agreement, if the Contractor enters into any other contracts with other City agencies that

were not listed in the DRMP, the Contractor shall notify the Agency promptly after the Comptroller registers any such contract. Nothing in this Agreement shall prevent the Contractor from bidding on other contracts with the City.

- F. *Review by Category 9 Contractors.* The following provision applies only to Category 9 Contractors. The Contractor shall be required to review, recommend for approval or disapproval, and provide any other services necessary for the City in evaluating DRMP submissions.

ARTICLE 4: PAYMENT

A. *Payment for DRMP:*

1. Prior to issuing Task Order #1, the Agency shall issue to the Contractor a request for proposal for the preparation and annual updates of the DRMP. Within two weeks of the Agency's issuance of the request for proposal, the Contractor shall submit to the Agency a proposal, which shall include at a minimum:
 - a. Description of the Contractor's current disaster and readiness and mobilization plan, if any.
 - b. The Contractor's proposed approach to develop the DRMP (or tailor Contractor's existing disaster readiness and mobilization plan) according to the Scope of Work described in Exhibit A.
 - c. Applicable only to Category 9 Contractors: The timeline and fixed fee for reviewing other DRMPs as assigned by the City.
 - d. The Contractor's estimated time for preparing and submitting the DRMP to the Agency for its review.
2. Upon the City's approval of the DRMP, the Contractor shall invoice the City for the agreed upon fixed fee.

- B. *Payment for Emergency Response Work.* The City shall pay for the Contractor's satisfactory Emergency Response Work in accordance with Exhibit B.

C. *Prompt Payment*

1. The prompt payment provisions of Procurement Policy Board (PPB) Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

2. The Contractor shall submit a proper invoice to the Agency to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.
3. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

D. Economic Price Adjustment. For the formula for economic price adjustments, please see Exhibit B.

E. Electronic Funds Transfer

1. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the “EFT Vendor Payment Enrollment Form” available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.
2. The Agency may waive the application of the requirements of this Article 4(E) to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of the preceding paragraph for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

F. Reductions in Federal, State, or City Funding

1. Task Orders may be funded in whole or in part by funds secured from the federal, State or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement or an individual Task Order in whole or in part, or to reduce the funding or level of services in a Task Order caused by such action by the federal, State, or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of elements of the Work.
2. In the case of the reduction option referred to in Article 4(F)(1), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Agency shall afford the Contractor an opportunity to make, within seven Days, suggestions it may have as to which elements of the Work might be reduced or eliminated. The Agency shall not be bound to utilize the Contractor's suggestions and the Agency shall have sole discretion as how to effectuate the reductions or eliminations.
3. If the City reduces funding pursuant to this Article 4(F), the City shall pay for satisfactory Work performed prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of a Task Order prior to receipt of notices of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event, shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

ARTICLE 5: CONTRACTOR SELECTION FOR EMERGENCY RESPONSE WORK AND TASK ORDER PROCESS

A. Conditions Precedent to Issuing a Task Order for Emergency Response Work

1. The Agency may issue a Task Order for Emergency Response Work when the following conditions are met:
 - a. A Qualifying Event exists, as that term is defined below;
 - b. The Agency determines, in consultation with NYCEM, that there is an unforeseen danger to life, safety, property, or a necessary service due to an impending emergency and the existence of such condition creates an immediate and serious need for the goods, services, or construction described in Exhibit A that cannot be met through normal procurement methods; and

- c. The Agency has obtained written approval, which may be provided electronically, from the Comptroller and the Corporation Counsel for an emergency procurement; and
 - d. The Agency determines in consultation with NYCEM that a public exigency or emergency for the requirement for goods, services, or construction will not permit a delay resulting from a competitive solicitation using a different procurement method.
2. For the purposes of issuing Task Orders under this Agreement, a “Qualifying Event” exists when either (i) an Emergency Declaration is in effect, or (ii) based on the circumstances, and in consultation with the Mayor’s Office and any relevant subject matter experts, the Commissioner of NYCEM has communicated to the Agency that an Emergency Declaration is expected to be issued within the next 48 hours. If the Agency issues a Task Order where the Qualifying Event is established under subsection (ii), the Agency, in consultation with NYCEM, must reassess the circumstances at least every 24 hours to determine if a Qualifying Event still exists and, in no case, shall a Qualifying Event established under subsection (ii) exist for a period of time longer than 120 hours from the first communication issued by the Commissioner of NYCEM.
 3. If the Agency issues a Task Order and a Qualifying Event ceases to exist with respect to that Task Order, the Agency must notify NYCEM and must terminate such Task Order as soon as is reasonably practicable.

B. Contractor Selection Process

1. The Agency intends to award up to 3 contracts for the scope of Work described in Exhibit A. When the conditions in Article 5(A) have been met, the Agency may award a Task Order for Emergency Response Work to one or more contractors awarded a contract, including Contractor. The selection of a contractor shall be in accordance with the process set forth below.
2. The City reserves the right not to issue any Task Orders for Emergency Response Work and to proceed with an emergency procurement for the required services or to have the services performed by City employees or another contractor if the City determines it would be in its best interest to do so.
3. The City will endeavor to notify each contractor holding a contract for the scope of Work described in Exhibit A when there is a need for the Work described in Exhibit A. If the public exigency or emergency for the required services will not permit a delay, the City may contact fewer than all of the contractors awarded a

contract for the scope of work described in Exhibit A. Such notification may be by telephone, email, or any other available method.

4. Such notification, which may be provided orally or in writing, shall include a description of the required Work, the date and time a representative of a contractor must be on-site if awarded a Task Order for Emergency Response Work, and a request for proposals.
5. Upon such notification, the Contractor shall promptly provide a proposal, orally or in writing, as directed by the Agency. The Contractor must respond to every request that it receives. The Agency may declare that the Contractor is in default if it fails to provide a response. The Agency may reject any proposal that fails to meet the submission requirements.
6. To the extent possible, the Contractor's proposal shall include:
 - a. The Contractor's price and basis for such pricing to perform the Task Order for Emergency Response Work;
 - b. The identity of proposed Subcontractors, to the extent they are known; and
 - c. The Contractor's estimated time for performance.

If the Contractor's proposal (attached as Exhibit J) for the award of the On-Call Emergency Contract included unit prices, such unit prices shall be the basis for the price proposal to the extent they are applicable. To the extent possible, the Contractor's proposal shall follow its DRMP.

7. The City shall award the Task Order(s) for Emergency Response Work to the contractor(s) based on price or a combination of other factors, including capacity, contractor's time needed to get to the Site (if on-site Work is required), and experience. If awarded a Task Order for Emergency Response Work, the City may direct the Contractor to provide Work in any of the five boroughs and nearby, if specified in the Scope of Work. The City may select multiple contractors to provide services in the same general location. The City reserves the right not to issue a Task Order for Emergency Response Work to the Contractor if, in its sole opinion, the Contractor may be unable to provide the required services in a satisfactory and timely manner.
8. The Contractor may not begin Work under the terms of this Agreement without an authorized Task Order for Emergency Response Work. A Task Order for Emergency Response Work may initially be verbal. As soon as possible, but no later than 72 hours after the initial notification of award of the Task Order for Emergency Response Work, the Contractor and the Agency shall agree on a scope

of work to be turned into a written Task Order for Emergency Response Work that will include the services, the pricing, and other relevant information (e.g., staffing).

9. If the Contractor is awarded a Task Order for Emergency Response Work and the Contractor is unable to perform the services on such Task Order for Emergency Response Work because of lack of capacity or conflict of interest, the Agency may disqualify the Contractor for the purposes of that Task Order for Emergency Response Work and select another contractor.

C. Preparation of Task Order for Emergency Response Work

1. The Agency will define the Work to be done under a Task Order for Emergency Response Work. The Agency may provide only general direction for accomplishing the Work, and it may defer to the Contractor to select the means and methods to be used. Depending on the nature of the emergency, the Parties will work closely together on accomplishing the Work and, if the police, fire or emergency services agencies are involved, the Parties will cooperate with such emergency services agencies while performing a Task Order for Emergency Response Work.
2. After approval by the Agency of the Contractor's proposal for the Task Order for Emergency Response Work, the Contractor shall promptly obtain the resources, such as staffing, Subcontractors, materials, equipment, and supplies needed to accomplish the Work.

D. Substance of Task Order for Emergency Response Work

1. The Task Order for Emergency Response Work shall include investigation, planning, management, performance, supervision, and coordination of all Work necessary for any Task Order for Emergency Response Work assigned to effectuate its timely completion. The Contractor may be expected to provide services on a 24-hours-a-day, 7-days-a-week basis.
2. The Contractor and the City will meet regularly at the Site(s) or elsewhere, as specified by the City. More than one meeting per day may be required if necessary, in the discretion of the City.
3. The Contractor shall cooperate with the City and any auditors as its Work and documentation relating to such Work is reviewed.

4. If directed to by the Agency, the Contractor shall work with the City to draft a recovery plan and provide professional advice on the most practical and efficient options for recovery.
5. If directed to by the Agency or NYCEM, the Contractor shall provide staffing (potentially 24-hours-a-day, 7-days-a-week) to the City's Emergency Operations Center, Logistics Center, or similarly situated coordination center for the purposes of interfacing with City emergency personnel.

E. Task Order Completion Times

1. The completion time for Work under a Task Order for Emergency Response Work may not be known until after the Work has begun. If the completion time is known at the time the written Task Order for Emergency Response Work is issued, the Task Order for Emergency Response Work will specify the date for final completion or, if applicable, Substantial Completion as defined in the Task Order. If the completion time under a Task Order for Emergency Response Work is not known at the time the written Task Order for Emergency Response Work is issued, the Parties will work together to determine a mutually acceptable date for final completion or, if applicable, Substantial Completion and shall issue a Supplemental Task Order that contains the agreed upon date. The Task Order for Emergency Response Work may provide for liquidated damages or other remedies for failure to meet deadlines and other performance requirements.
2. The Contractor shall work in good faith to complete the Work under a Task Order for Emergency Response Work in a timely manner under the circumstances. In performing the Work under a Task Order for Emergency Response Work, the Contractor and the Agency shall emphasize techniques and strategies that will aid in expediting the completion of the emergency services required under a Task Order for Emergency Response Work. The Contractor agrees to use all resources at its command so that each Task Order for Emergency Response Work is completed in a timely manner by itself and, if applicable, by its Subcontractors.
3. The Contractor and the City acknowledge that time will be of the essence for each Task Order for Emergency Response Work and will use their best efforts to prevent delays. If a situation that may cause a delay cannot be resolved, the Contractor shall bring it to the immediate attention of the Agency. The Contractor must notify the NYC Emergency Operations Center (EOC) and Logistics Center (LC) if problems concerning the supply chain arise.

ARTICLE 6: AMENDMENTS TO AGREEMENT AND TASK ORDERS

A. *Changes to the Agreement.* Changes to this Agreement may be made only as duly authorized by the ACCO of the Agency or his or her designee and in accordance with the PPB Rules. Any change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties.

B. *Changes to a Task Order*

1. Changes to a Task Order may be made only as duly authorized by the ACCO of the Agency or his or her designee and in accordance with the PPB Rules. A change to a Task Order will be made by a Supplemental Task Order. A change to a Task Order shall not be valid unless made in writing and signed by authorized representatives of both parties.
2. Supplemental Task Orders will be issued for Extra Work necessary to complete the Work included in the original scope of a Task Order or for changes to the scope of such Task Order deemed necessary to respond to the Qualifying Event by the Commissioner of the Agency.
3. Prices for Extra Work added by a Supplemental Task Order will be determined as follows:
 - a. If the Agreement or Task Order includes unit prices that cover all or some of the Supplemental Task Order Work, such unit prices shall apply to the extent they cover such Work.
 - b. If the Agreement or Task Order includes prices for labor or materials that covers the employees or materials necessary to accomplish Supplemental Task Order Work provided on a time and materials basis, such prices shall apply to the extent they cover such Work.
 - c. To the extent that (a) and (b) of this Article 6(B)(3) do not apply, the price of such Supplemental Task Order Work shall be paid by agreement of a fixed price or in any other manner approved by the CCPO.
 - d. For Categories #1, #2, #3 and #17, Article 26 of Exhibit F shall govern prices for Extra Work added by Supplemental Task Order.
 - e. For Categories #4, #5, #8, and #16, Article 21 of Exhibit F shall govern prices for Extra Work added by Supplemental Task Order.

C. *Changes Through Fault of Contractor.* If any change is required to the Work to be provided under a Task Order because of the negligence or error of the Contractor, no

additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

ARTICLE 7: CONTRACTOR DEFAULT

A. *Grounds for Default.* In addition to those instances specifically referred to in other provisions of this Agreement, including a Task Order, the Commissioner shall have the right to declare the Contractor in default of this Agreement or any Task Order issued hereunder if:

1. The Contractor breaches a material term or condition of the Agreement, including a Task Order, including unsatisfactory performance of Work; or if
2. The Contractor fails to respond to a request for a proposal for Emergency Response Work; or if
3. The Contractor fails to commence Work when notified to do so by the Agency; or if
4. The Contractor abandons the Work; or if
5. The Contractor shall refuse to proceed with the Work when and as directed by the Commissioner; or if
6. The Contractor, without just cause, reduces its working force to a number that, if maintained, would be insufficient, in the opinion of the Commissioner, to complete the Work in accordance with the progress schedule (if applicable) or within the time set forth in the Task Order; or if
7. The Contractor fails or refuses to increase sufficiently such working force when ordered to do so by the Commissioner; or if
8. The Contractor sublets, assigns, transfers, converts or otherwise disposes of this Agreement other than as herein specified; or sells or assigns a majority interest in the Contractor; or if
9. The Contractor fails to secure and maintain all required insurance or fails to cause its Subcontractors to secure and maintain all required insurance (if applicable); or if
10. The Contractor is unable to perform Work due to a lack of capacity or conflict of interest; or if
11. The Contractor is insolvent or proceedings by or against the Contractor, either voluntarily or involuntarily, are commenced under the Bankruptcy Code or

relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors; or if

12. The Commissioner shall be of the opinion that the Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the Work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if
13. The Commissioner shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Agreement, including a Task Order; or if
14. The Commissioner shall be of the opinion that the Work cannot be completed within the time set forth in the Task Order or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the Commissioner's opinion, attributable to conditions within the Contractor's control; or if
15. The Work is not completed within the time set forth in the Task Order or within the time to which the Contractor may be entitled to have such completion extended; or if
16. Any statement or representation of the Contractor in the Agreement or in any document submitted by the Contractor with respect to the Work, the Task Order, or the Agreement (or for purposes of securing the Agreement, including a Task Order) was untrue or incorrect when made; or if
17. The Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:
 - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
 - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
 - c. a criminal violation of any state or federal antitrust law;
 - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 et seq., or the Mail Fraud Act, 18 U.S.C. §§ 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

- e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
 - f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.
- B. *Opportunity to be Heard.* Before the Commissioner shall exercise his/her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard in person or in writing, upon not less than two Days' notice or a longer period set forth in the notice. The Commissioner may, in his or her discretion, offer the Contractor an opportunity to cure the default. The Commissioner may temporarily suspend Work under the Agreement pending the outcome of the default proceedings pursuant to this Article 7.
- C. *Notice of Default.* The right to declare the Contractor in default for any of the grounds specified above or elsewhere in this Agreement or in the applicable Task Order shall be exercised by sending the Contractor a notice, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (hereinafter referred to as a "Notice of Default").
- D. *Partial Default.* The Commissioner shall have the right to declare the Contractor in default as to a part of the Work only. In such a case, the Contractor shall discontinue such part, shall continue performing the remainder of the Work in strict conformity with the terms of the Agreement and applicable Task Order, and shall in no way hinder or interfere with any Other Contractor(s) or persons whom the Commissioner may engage to complete the Work as to which the Contractor was declared in default. If the Commissioner declares the Contractor in partial default, the City shall be entitled to utilize for completion of the part of the Work as to which the Contractor was declared in default only such plant, materials, equipment, tools, and supplies as had been previously used by the Contractor on such part.
- E. *Finality.* The Commissioner's determination that the Contractor is in default shall be conclusive, final, and binding on the Parties and such a finding shall preclude the Contractor from commencing a plenary action for any damages relating to the Agreement. If the Contractor protests the determination of the Commissioner, the Contractor may commence an action in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.
- F. *Completion of the Work*
- 1. The Commissioner, after declaring the Contractor in default on a Task Order for Emergency Response Work, may then have the Work completed by such means

and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with the applicable PPB Rules.

2. For the purpose of completing the Work, the Agency may utilize such of the Contractor's plant, materials, equipment, tools, and supplies remaining on the Site, and also such Subcontractors, as he or she may deem advisable.
3. After such completion, the Commissioner shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages (at the rate provided for in the Task Order for Emergency Response Work) from the date when the Work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the Work. Such certificate shall be binding and conclusive upon the Contractor, its sureties (if applicable), and any person claiming under the Contractor, as to the amount thereof.
4. The expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, shall be charged against and deducted out of monies which are earned by the Contractor prior to the date of default. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Task Order for Emergency Response Work if it had been completed by the Contractor, any excess shall be paid by the Contractor.

ARTICLE 8: TERMINATION, SUSPENSION, AND LIQUIDATED DAMAGES

- A. *Termination without Cause.* The Agency shall have the right to terminate or suspend the Agreement, a Task Order, or part of the Work without cause in accordance with the procedures set forth in this Article 8. The City shall not incur or pay any further obligation pursuant to the Agreement beyond the termination date set by the Agency. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.
- B. *Termination for Cause.* The Agency shall have the right to terminate or suspend the Agreement, a Task Order, or part of the Work for cause for any of the reasons set forth in Article 7 of this Agreement in accordance with the procedures in Article 7 and this

Article 8. The City shall not incur or pay any further obligation pursuant to the Agreement beyond the termination date set by the Agency. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

C. Procedures for Termination

1. The Agency shall give the Contractor written notice of any termination of this Agreement, a Task Order, or part of the Work. Such notice shall specify the applicable provision(s) under which the Agreement, Task Order, or part of the Work is terminated and the effective date of the termination.
2. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope.
3. For termination for cause, the effective date of the termination shall be the date that the Agency declares the Contractor in default in accordance with Article 7, above, unless the Agency sets a different date.
4. The Contractor shall, upon receipt of notice of termination, unless otherwise directed by the Commissioner:
 - a. Stop Work on the date specified in the notice of termination;
 - b. Take such action as may be necessary for the protection and preservation of the City's materials and property;
 - c. Cancel all cancelable orders for material and equipment
 - d. As directed by the Agency either: (i) assign to the City and deliver to the Site or another location designated by the Commissioner, any non-cancelable orders for material and equipment that is not capable of use

except in the performance of this Agreement and has been specifically fabricated for the sole purpose of this Agreement and not incorporated into the Work or (ii) furnish, within 45 Days, an inventory to the Agency of material and equipment purchased through or provided under this Agreement and carry out any Agency directive concerning the disposition of such material and equipment;

- e. Take no action that will increase the amounts payable by the City under this Agreement;
- f. Provide reasonable assistance to the Agency in the transition, if any, to a new contractor;
- g. Account for and refund to the Agency, within 45 Days, any unexpended funds that the Agency advanced to the Contractor pursuant to a Task Order;
- h. If and as requested by the Agency, turn over to the Agency or its designees all books, records, and documents specifically relating to this Agreement or a Task Order;
- i. Furnishing to the Agency, within 30 Days, an inventory of all equipment, appurtenances, and property purchased through or provided under this Agreement, and carrying out any Agency directive concerning the disposition thereof; and

- D. *Suspension.* In addition to any other powers set forth in this Agreement or by operation of Law, the Commissioner may suspend, in whole or in part, any part of the services to be provided under a Task Order for Emergency Response Work whenever such suspension is in the best interest of the City in his or her judgment. The City shall pay for satisfactory Work performed prior to the suspension date that is specified in a written notice of suspension provided by the Agency to the Contractor. In addition, any obligation necessarily incurred by the Contractor on account of a Task Order for Emergency Response Work prior to receipt of notice of suspension and falling due after the suspension date shall be paid by the City in accordance with the terms of this Agreement.
- E. *Liquidated Damages.* If this Agreement or a Task Order includes liquidated damages for a failure to comply with a provision of this Agreement or a Task Order, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

- F. *Miscellaneous.* Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement or a Task Order, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.
- G. *No Limitation.* The rights and remedies of the City provided in this Article 8 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

ARTICLE 9: SUBCONTRACTORS

- A. *Maximum Value of Subcontracts.* The Contractor shall not make subcontracts totaling an amount more than 49% of the total value of each Task Order for Emergency Response Work without prior approval from the Agency.
- B. *Employer-Employee Contracts.* Individual employer-employee contracts are not subcontracts subject to this Article 9.
- C. *Agency Approval of Subcontracts.* In accordance with PPB Rule § 4-13, all Subcontractors must be approved by the Agency prior to commencing Work under a subcontract. For determining the value of a subcontract, all subcontracts with the same Subcontractor or proposed Subcontractor shall be aggregated. If the Subcontractor was not previously approved in the DRMP, the following procedures apply:
1. *Approval when a subcontract is \$20,000 or less.* The Agency hereby grants approval of all Subcontractors providing services covered by this Agreement pursuant to a subcontract that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Agency listing all such Subcontractors and shall list the Subcontractor in the City's Payee Information Portal (www.nyc.gov/pip).
 2. *Approval when a subcontract is greater than \$20,000.*
 - a. The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval of the Agency of the proposed Subcontractor.
 - b. Prior to entering into any subcontract for an amount greater than \$20,000.00, the Contractor shall submit a written request for the approval of the proposed Subcontractor to the Agency. Such request shall include the following information, in addition to other information that may be requested by the Agency tending to prove that the proposed Subcontractor

has the necessary facilities, skill, integrity, past experience, and financial resources to perform the Work in a accordance with the terms and conditions of this Agreement: (i) name and address of the proposed Subcontractor, (ii) portion of the work it is to perform (and materials that it is to furnish, if applicable), (iii) the estimated cost of the subcontract, (iv) information required by PPB Rule 2-08(e), if applicable, and (v) the proposed subcontract. In addition, if the proposed Subcontractor is required to maintain insurance in accordance with Exhibit C, the Contractor shall subject the proposed Subcontractor's proof of insurance, which must include, certificate(s) of insurance, certification of insurance broker or agent, and any required additional insured endorsements.

- c. If an approved Subcontractor elects to subcontract any portion of its subcontract, the proposed sub-subcontractor shall be subject to approval in accordance with the above requirements.
- d. The Agency will notify the Contractor in writing if the proposed Subcontractor is approved. If the proposed Subcontractor is not approved, the Contractor may submit another proposed Subcontractor unless the Contractor decides to perform the Work. No Subcontractor shall be permitted to perform any Work unless approved.
- e. Notwithstanding paragraphs b-d of this Article 9(C)(2), the Agency may grant preliminary approval of a subcontract exceeding \$20,000 and may allow the Subcontractor to perform Work on the condition that the Contractor shall comply with paragraphs (b)-(e) as soon as practicable.

D. *Revocation of Approval.* The Agency may revoke the approval of a Subcontractor granted or deemed approved in accordance with Article 9(C) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the Subcontractor to cease all Work under the subcontract. The City shall not incur any further obligation for services performed by such Subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for satisfactory Work performed by the Subcontractor in accordance with this Agreement prior to the effective date of revocation.

E. *Content of Subcontracts.* Each subcontract must be memorialized in writing as soon as practicable considering the emergency circumstances and must contain the following provisions, at a minimum, in addition to any other provisions specified by the Agency in the Task Order for Emergency Response Work.

1. An express agreement that Subcontractor's Work, including any materials furnished, shall strictly comply with the requirements of this Agreement and the applicable Task Order for Emergency Response Work. Accordingly, before entering into any subcontract hereunder, the Contractor shall provide the proposed Subcontractor with a complete copy of this Agreement and the applicable Task Order for Emergency Response Work and inform the proposed Subcontractor fully and completely of all provisions and requirements of this Agreement and the applicable Task Order for Emergency Response Work relating either directly or indirectly to the Work to be performed and the materials to be furnished under such subcontract.
2. If the City anticipates that the Task Order for Emergency Response Work is federally funded, a statement that the Subcontractor is responsible for complying with the federal requirements in this Agreement (see Exhibit H).
3. The following statement: "Contractor encourages the subcontractor to understand the local community and use local resources where appropriate."
4. Insurance requirements for Subcontractors as set forth in Exhibit C.
5. A provision regarding the resolution of disputes between the Subcontractor and the Contractor that complies with the requirements in this Agreement.
6. A provision stating that nothing contained in the agreement between the Contractor and the Subcontractor shall impair the rights of the City.
7. A provision that nothing contained in the agreement between the Contractor and the Subcontractor, or in the Agreement between the City and the Contractor shall create any contractual relation between the Subcontractor and the City.
8. A provision requiring that the Subcontractor comply with the requirements of Executive Order 50 (see Article 2(E)(4) of Exhibit E) and the records retention requirements of this Agreement (see Article 3 of Exhibit E) and specifically agrees that the City may enforce such provisions directly against the Subcontractor as if the City were party to the subcontract.
9. If the subcontract exceeds \$50,000, a provision that the Subcontractor shall not engage in any unlawful discriminatory practice as defined in Title VIII of the Administrative Code (Section 8-101 *et seq.*).
10. For Work subject to Labor Law Section 220, the prevailing wage rates and supplemental benefits to be paid in accordance with Labor Law Section 220.
11. For Task Orders for Emergency Response Work that include construction or construction-related Work, the same terms and conditions as to method of payment

for Work, labor, and materials, and as to retained percentages, as are contained in Exhibit F to this Agreement.

- F. *Copy of Subcontract.* The Contractor shall provide a copy of any subcontract or solicitation for a subcontract promptly upon the Agency's demand.
- G. *Responsibility for Subcontractors.* The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its Subcontractors and of the Subcontractor's officers, agents, and employees as it is for the acts and omissions of any person directly employed by the Contractor. The Agency's approval of the Subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities hereunder.
- H. *Subcontractor Reporting System.* Following a Task Order for Emergency Response Work, the Contractor must list its Subcontractors in the web based Subcontractor Reporting System through the City's Payee Information Portal (PIP), available at www.nyc.gov/pip. For each Subcontractor listed, the Contractor is required to provide the following information: maximum contract value, description of the Subcontractor's Work, start and end date of the subcontract, and identification of the Subcontractor's industry. Thereafter, the Contractor will be required to report in the system the payments made to each Subcontractor within 30 days of making a payment. If any of the required information changes throughout the term of the Agreement, the Contractor will be required to revise the information in the system.

Failure of the Contractor to list a Subcontractor or to report Subcontractor payments in a timely fashion may result in the Commissioner declaring the Contractor in default of the Contract and will subject the Contractor to liquidated damages of \$100 per day for each day that the Contractor fails to identify a Subcontractor along with the required information about the Subcontractor and fails to report payments to a Subcontractor, beyond the time frames set forth herein or in the notice from the City.
- I. *Minority- and Women-Owned Business Enterprises.* The City is committed to providing opportunities for minority- and women-owned business enterprises (M/WBEs), and strongly encourages the Contractor to utilize M/WBEs for services required pursuant to this Agreement. The Contractor's attention is directed to Article C(11) of Part 1 of Exhibit H for requirements applicable to federally funded contracts concerning the use of small firms, M/WBE firms, and labor surplus area firms.
- J. *Local Resources.* The City encourages the Contractor to understand the local community and use local resources where appropriate.

ARTICLE 10: AGREEMENT COMPONENTS

A. *Exhibits.* This document is referred to throughout as “the main body of the Agreement.” All Task Orders and the following exhibits to this Agreement are incorporated herein:

1. Cover Page
2. Exhibit A: Scope of Work
3. Exhibit B: Payment
4. Exhibit C: Indemnification and Insurance
5. Exhibit D: Bonding Requirements
6. Exhibit E: City Terms and Conditions
7. Exhibit F: Supplemental City Terms and Conditions
8. Exhibit G: HireNYC Requirements
9. Exhibit H: Federal Terms and Conditions
10. Exhibit I: Iran Divestment Rider and Certification
11. Exhibit J: Contractor’s Proposal

B. *Attachments.* The following attachments to this Agreement are attached for the Contractor’s use as specified in the Agreement:

1. Attachment C-1: Certification of Insurance Broker or Agent
2. Attachment D-1: Form of Performance Bond (for Task Orders for Emergency Response Work that are \$5 million or less)
3. Attachment D-2: Form of Performance Bond (for Task Orders for Emergency Response Work that exceed \$5 million)
4. Attachment D-3: Form of Payment Bond
5. Attachment E-1: Whistleblower Protection Expansion Act Poster
6. Attachment E-2: Living Wage Schedules
7. Attachment E-3: Living Wage Certification
8. Attachment E-4: Living Wage Notices
9. Attachment E-5: Identifying Information Rider
10. Attachment E-6: HIPAA Rider
11. Attachment E-7: Access to Non-Public Areas Rider
12. Attachment E-8: Prevailing Wage Schedules

C. *Merger:* This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 6 or a Task Order issued under this Agreement.

ARTICLE 11: NOTICES; TELEPHONE

- A. *Designated Address for Notices.* The Contractor and the Agency hereby designate the business addresses and email addresses specified on the cover page of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below. An additional address for notices to the Agency will be provided in a Task Order; if no address is provided in the Task Order, the Contractor shall promptly ask the Agency to provide such information separately.
- B. *Form of Notice.* Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.
- C. *Telephone.* The Contractor shall provide a telephone number where it can be reached 24 hours a day/365 days a year in order to respond to a call for services. The phone tied to that number must be text-capable and must be able to receive email.
- D. Where this Agreement requires the Contractor to provide notice to NYCEM, the Contractor shall provide such notice to the following:

City of New York Emergency Operations Center
165 Cadman Plaza East
Brooklyn, NY 11201
718-422-8700 (staffed 24 x 7) / 718-422-8800
EOCLogistics@oem.nyc.gov; EOCPlanningSection@oem.nyc.gov

ARTICLE 12: DEFINITIONS; RULES OF INTERPRETATION

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

1. “Admin. Code” means the City Administrative Code.
2. “Addendum” or “Addenda” means the additional Agreement provisions or technical clarifications issued in writing by the City prior to the receipt of bids or proposals.
3. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.
4. “Business Day” means a day other than a Saturday, Sunday or a day on which the executive offices of the City are not officially open for business.
5. “Category 9 Contractor” means a firm engaged by the City to provide supervision, management, and administrative services in connection to the On-Call Emergency Contract Program.
6. “Charter” means the City Charter.
7. “City” means the City of New York.
8. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.
9. “Commissioner” or “Agency Head” means the head of the Agency. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.
10. “Comptroller” means the Comptroller of the City of New York.
11. “Contractor” means the entity that executed this Agreement, whether a corporation, firm, partnership, joint venture, individual, or any combination thereof, and its, their, his/her successors, personal representatives, executors, administrators, and assigns, and any person, firm, partnership, joint venture, individual, or corporation which shall at any time be substituted in the place of the Contractor under this Agreement.
12. “Day” means a calendar day unless specifically noted as a Business Day.

13. “Emergency Declaration” or “Declaration of Emergency” means a local or state declaration issued by the Mayor or the Governor in accordance with the N.Y. Executive Law.
14. “Emergency Response Work” means the Work ordered under a Task Order that is needed to assist the City’s efforts to avoid or mitigate serious danger to life, safety, property or necessary service. Emergency Response Work does not include Work ordered under Task Order #1.
15. “Extra Work” means Work that was not included in the original Task Order at the time the written task order is agreed on that is added by a Supplemental Task Order, and, if applicable Article 26 of Exhibit F for Categories #1, #2, #3 and #17, and Article 21 of Exhibit F for Categories #4, #5, #8 and #16.
16. “Governor” means the Governor of the State of New York.
17. “Law” or “Laws” means the Charter, the Admin. Code, a local rule of the City of New York, the Constitutions of the United States and the State, a statute of the United States or of the State and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.
18. “Mayor” means the Mayor of the City of New York.
19. “NYCEM” means New York City Emergency Management.
20. “Other Contractor(s)” means any contractor (other than the entity that executed this Agreement or its Subcontractors) who or which has a contract with the City for work on or adjacent to the Site of the Work.
21. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.
22. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (RCNY), §§ 1-01 *et seq.*
23. “Site” means the area upon or in which the Contractor’s Work is carried on, and such other areas adjacent thereto as may be designated as such by the City; provided, however, that this does not include the Contractor’s permanent offices.
24. “State” means the State of New York.

25. “Subcontractor” or “Subconsultant” means any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or its Subcontractors to furnish or actually furnishes consulting services, labor, or labor and materials, or labor and equipment, in the performance of any Work under this Agreement.
26. “Supplemental Task Order” means a written change to a Task Order.
27. “Task Order” means a written directive by the Agency (including a verbal directive to be memorialized in writing within 72 hours of the verbal directive) by which Work is assigned to the Contractor.
28. “Task Order #1” means the Task Order issued by the Agency directing the Contractor to develop and submit a Disaster Readiness and Mobilization Plan.
29. “Task Order Work” means everything required to be furnished and done by the Contractor in a Task Order at the time a written Task Order is agreed on, except Extra Work.
30. “Work” means all tasks and services required under this Agreement, including labor, material, superintendence, management, administration, equipment, and incidentals, and obtaining any and all permits, certifications and licenses as may be necessary and required to complete the Work.

B. *Additional Definitions.* Additional definitions may be included in Exhibit A, or Article 2 of Exhibit F, or elsewhere in this Agreement.

C. *Rules of Interpretation.*

1. *Headings.* The article, section, and paragraph headings throughout this Agreement are for convenience and reference only and the words contained therein shall in no way be deemed to define, limit, describe, explain, modify or add to the interpretation or meaning of any provision of this Agreement or the scope or intent thereof, nor in any way affect this Agreement.
2. *Singular/Plural.* The singular comprises the plural and vice versa, as the context may require.
3. *Including.* The words “including,” “includes,” etc. are without limitation and are equivalent to “including, but not limited to.”
4. *“Or.”* The word “or” is not exclusive and is equivalent to “and/or.”

5. *Task Order issued pursuant to this Agreement shall be a component of the Agreement.* As provided in Article 10, each Task Order is part of the Agreement notwithstanding that some provisions refer to the Agreement “or” a Task Order.
6. *Times.* All times stated are local New York City time.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above written.

CITY OF NEW YORK

By:

CONTRACTOR

By:

Title:

Fed. Employer I.D. No. or Soc. Sec. No.

Approved as to Form and
Certified as to Legal Authority

Acting Corporation Counsel

ACKNOWLEDGEMENT BY THE CITY

STATE OF NEW YORK)
 :SS:
COUNTY OF NEW YORK)

On this _____ day of _____ 20 _____, before me personally came
_____, to me known and known to me to be
_____ of the NEW YORK CITY DEPARTMENT
OF [INSERT NAME], the person described in and who is duly authorized to execute the
foregoing instrument on behalf of the Commissioner, and he/she acknowledged to me that he/she
executed the same for the purpose therein mentioned.

Notary Public or Commissioner of Deeds.

ACKNOWLEDGMENT OF CONTRACTOR IF A CORPORATION

State of _____ County of _____ ss:

On this _____ day of _____ 20 _____, before me personally came
_____,
to me known, who, being by me duly sworn did depose and say that he/she resides
at _____
_____; that he/she is the
_____ of the corporation described in and which executed the foregoing
instrument; and that he signed his name to the foregoing instrument by order of the directors of
said corporation as the duly authorized and binding act thereof.

Notary Public or Commissioner of Deeds.

ACKNOWLEDGMENT OF CONTRACTOR IF A PARTNERSHIP

State of _____ County of _____ ss:

On this _____ day of _____ 20 _____ before me personally came _____

to me known, who, being by me duly sworn did depose and say that he/she resides at _____

_____ ; that he/she is _____ partner of _____, a limited/general partnership existing under the laws of the State of _____, the partnership described in and which executed the foregoing instrument; and that he/she signed his/her name to the foregoing instrument as the duly authorized and binding act of said partnership.

Notary Public or Commissioner of Deeds.

ACKNOWLEDGMENT OF CONTRACTOR IF AN INDIVIDUAL

State of _____ County of _____ ss:

On this _____ day of _____ 20 _____ before me personally came _____

to me known, who, being by me duly sworn did depose and say that he/she resides at _____

_____, and that he/she is the individual whose name is subscribed to the within instrument and acknowledged to me that by his/her signature on the instrument, said individual executed the instrument.

Notary Public or Commissioner of Deeds.

EXHIBIT A

SCOPE OF WORK

CATEGORY #11: BUILDING ASSESSMENT TEAMS

ARTICLE 1: SUMMARY

In a large-scale emergency, the Contractor will perform rapid safety assessments of buildings and their life protective systems impacted by a disaster. These assessments will pertain only to the structural stability and safety of the building for occupancy. The assessments will be performed in accordance with the standards set forth by the Applied Technology Council (ATC). The evaluations will be specific only to building structural soundness and life protective systems for occupancy.

ARTICLE 2: TASK ORDER #1

Task Order #1 is governed by Article 3 of the main body of the Agreement.

ARTICLE 3: TASK ORDERS FOR EMERGENCY RESPONSE WORK

- A. As required in a Task Order for Emergency Response Work, the Contractor shall provide the personnel necessary to perform rapid safety assessments of buildings and their life protective systems impacted by a disaster.
 - 1. The Contractor shall be required to do a visible assessment of the exterior of buildings assigned by the Agency. Assessments will pertain only to the stability of building structural systems and the safety of buildings for immediate occupancy.
 - 2. The Contractor shall perform assessments in accordance with the standards set forth by the Applied Technology Council (ATC) document ATC-45, "Safety Evaluation of Buildings after Windstorms and Floods."
 - 3. The Contractor shall submit its written Work, including all reports, photographs, drawings, and related materials, upon completion of the Work or earlier than completion if requested by the Agency.
- B. The Contractor shall provide the following staff necessary to perform the Work.

1. Principal: Partner or Head of the Professional Engineering Firm. Supervises the work of the Contractor; liaises with the Agency to ensure Agency inspection needs are met. Possesses a New York State professional engineering license and at least twelve years of engineering experience after graduation from an accredited four-year college or university.
2. Project Engineer: Supervise the Senior and Junior Structural Engineer titles to ensure that field inspections and condition assessments are performed in accordance with ATC-45 standards, “Safety Evaluation of Buildings after Windstorms and Floods”; ensure that reports and other inspection-related documents are accurate and timely submitted to the Department of Buildings. Possesses a New York State professional engineering license and at least ten years of experience in performing building inspections for compliance with the NYC Building Code after graduation from an accredited four-year college or university.
3. Senior Structural Engineer: Under the supervision of the Project Engineer and other senior staff, provides technical and managerial direction in structural engineering reviews; conducts field inspections and condition assessments in accordance with ATC-45 standards, “Safety Evaluation of Buildings after Windstorms and Floods”; and prepares reports and other inspection-related documents. Possesses a New York State professional engineering license and at least eight years of experience in performing building inspections for compliance with the NYC Building Code after graduation from an accredited four-year college or university.
4. Junior Structural Engineer: Under the supervision of the Senior Structural Engineer and other senior staff, conducts field inspections and condition assessments in accordance with ATC-45 standards, “Safety Evaluation of Buildings after Windstorms and Floods” and prepares reports and other inspection-related documents. Possesses a New York State professional engineering license and at least one year of experience in performing building inspections for compliance with the NYC Building Code after graduation from an accredited four-year college or university.

The Contractor may propose additional titles (along with a description of duties and educational and experience requirements) in its proposal. Such titles may be included in this section upon approval by the Agency.

ARTICLE 4: MOBILIZATION

The Contractor will be expected to mobilize as quickly as possible in emergency situations, which may be within 24 hours of request from the City.

ARTICLE 5: GENERAL ADMINISTRATIVE REQUIREMENTS

- A. The Contractor shall manage the total work effort associated with the required services to meet all objectives. Such management includes planning, scheduling, cost projecting, and accounting, establishing and maintaining documentation and records, report preparation, and quality control.
- B. The Contractor shall implement as necessary work control procedures to ensure timely accomplishment of Work, as well as to permit tracking and reporting Work in progress. The Contractor shall plan and schedule Work to ensure material, labor, equipment, and supplies are available to meet the Work requirements within the specified time limited and in conformance with the quality standards established.
- C. The Contractor shall establish and maintain an internal, comprehensive quality control program. The quality control program shall provide an effective means of identifying and correcting problems throughout the entire scope of operations. The Contractor's failure to implement and maintain its quality control program effectively through the Term may result in other appropriate action by the Commissioner including deductions from invoices or a decision not to award the next Task Order to the Contractor. The quality control program will apply to all Work, and it shall include the following:
 - 1. Accurate documentation of work processes, procedures, costs, and output measures.
 - 2. A systematic procedure for assessing compliance with performance objectives and standards defined in the Agreement, including the Task Order.
 - 3. Accurate documentation of quality inspections conducted throughout the execution of Work.
 - 4. Assessment-driven corrective action and process adjustments as appropriate.
- D. The Contractor shall be responsible for assigning sufficient personnel to the performance of this Agreement to ensure timely completion of all requirements. Staff reductions shall not be used as a rational for late or unperformed Work. Contractor shall ensure adequate staffing levels at all times. Such staff must have the necessary qualifications to perform the Work.
- E. The Contractor shall maintain a safety program to promote workplace safety, prevent accidents, provide incentives to work safely, and reduce the potential for bodily injury (including death) or property damage.
- F. The Contractor shall obtain all required permits, licenses, certifications, and authorizations to perform Work under this Agreement and provide evidence of them to the City upon request.
- G. The Contractor shall make all necessary arrangements through the appropriate office as necessary to obtain access to buildings, facilities, and any other Work areas, and when required, to arrange for them to be open and closed.

- H. The Contractor shall have a network of vendors in place or that can quickly be placed under contract for additional resources, as agreed upon by the City in accordance with the terms of the Agreement.

ARTICLE 6: KEY PERSONNEL

In its response to the City's solicitation for this Contract, the Contractor identified various individuals who will provide services for the titles of key personnel listed below. The individuals identified by the Contractor, as well as their titles, are set forth below. For any specific Task Order for Emergency Response Work, the Contractor expressly agrees to assign to such Task Order, for its entire duration, for each title required for Work, one of the individuals identified below, unless otherwise approved in writing by the Commissioner.

Title and Qualifications	Names
Principal	
Project Engineer	

EXHIBIT B
PAYMENT

Category #11: Building Assessment Teams

ARTICLE 1: PAYMENT FOR TASK ORDER #1

Year 1 Payment			
Item	Annual Payment	Description	{Estimated} Invoice Timeline 2020-2021
Accepted DRMP	\$50,000	Please see attachment with Sample Outline for Task Order 1. This item includes a draft DRMP and revisions as needed, until signed off by the Contract owner.	Q4 2020 (CELIP)
Exercise Participation & DRMP revision	\$13,000	Participation in an exercise. DRMP revision post exercise, based on AAR items identified during the exercise.	Q4 2020 or Q1 2021
Scorecard Submission (\$500/quarter)	\$2,000	Vendor's asset count and assessment of resource availability (related to resources that may be utilized during activation of contract). Submission guidelines of this data into online portal to be determined.	Each Quarter
Initial Kickoff Meeting (at NYCEM)	\$2,000	Vendor to send a minimum of 1 representative to an in-person kickoff meeting in NYC.	Q3 2020
Contract Owning Agency Integration (Discussion, draft protocol/checklist, onsite meetings x 2)	\$10,000	This includes integrating with existing systems, training on agency procedures, etc.	By June 2021

Review/Acceptance of Activation Protocol	\$1,500	Vendor to review and sign-off on contract activation protocol for NYC.	Q4 2020 (CELIP)
CALMS Module Training (remote)	\$1,000/staff member (x5 staff)	A minimum of 5 staff trained remotely on how to input scorecard information into NYC's online tracking system.	Q4 2020 (CELIP)
Minimum Year 1 Payment:		\$83,500	
*Additional Integration Projects (as needed)	+\$10,000	This includes additional integration with existing systems, training on agency procedures, etc.	Any Quarter
*MISC Expenses (must be detailed in invoice)	+\$500	Miscellaneous expenses, as deemed necessary and as approved by the contract owner in advance.	Any Quarter
*Planning Meetings (\$1000/each, up to 4/annually)	+\$4,000	Compensation for time spent attending Planning meetings.	Each Quarter
*Pre-mobilization/Readiness Calls (\$500/each, up to 4/annually)	+\$2,000	Compensation for time spent during pre-mobilization phone calls	As needed
Maximum Year 1 Payment:		\$100,000	

Year 2 (and any renewal periods) Payment			
Item	Annual Payment	Description	{Estimated} Invoice Timeline 2021- 2022
*Planning Meetings (\$1000/each, up to 4/annually) and/or TTX (\$2000/each)	+\$4,000	Compensation for time spent attending Planning meetings.	Each Quarter
Scorecard Submission (\$500/quarter)	\$2,000	Vendor's asset count and assessment of resource availability – quarterly submission of this data into online portal.	Each Quarter
*Pre-mobilization/Readiness Calls (\$500/each, up to 4/annually)	+\$2,000	Compensation for time spent during pre-mobilization phone calls that are scheduled by NYCEM	As needed
Maximum Year 2+ Payment	\$10,000		

**Indicates item that may or may not occur depending on contract activation and/or emergency incident.*

ARTICLE 2: PAYMENT FOR TASK ORDERS FOR EMERGENCY RESPONSE WORK

- A. *Maximum Payment.* This is a requirements agreement. The maximum amount paid to the Contractor for Task Orders for Emergency Response Work will be set forth in the Task Order.
- B. *Basis for Payment.* Payment for Task Orders for Emergency Response Work will be paid on a hourly basis, in accordance with Attachment C.

ARTICLE 3: ECONOMIC PRICE ADJUSTMENT

A. *Economic Price Adjustment.* The Contractor warrants that the prices in this Agreement do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this Article 3. If the Contractor's proposal for the award of this Agreement included unit prices or hourly wages (including fringe benefits) or both, the City may allow for a reasonable adjustment in unit prices, hourly wages (including fringe benefits) or both once during each year of the Term, not including the first year of the Term, upon request of the Contractor provided that the Contractor adequately justifies (i) the need for such adjustment in unit prices, hourly wages (including fringe benefits), or both and (ii) the cost reasonableness of such adjustment. Such adjustment shall be subject to the following:

1. For hourly wages that are subject to the prevailing wage or living wage schedules promulgated by the Comptroller or hourly wages that are otherwise subject to mandatory adjustments pursuant to statute or regulation, the City may adjust the hourly wage rates set forth in the Agreement commensurate with the adjustments required by the applicable wage schedule, statute or regulation, as applicable to each wage rate, effective upon the first anniversary date of the Agreement and the first day of each renewal term.
2. For hourly wages that are not subject to the prevailing wage or living wage schedules promulgated by the Comptroller or otherwise subject to mandatory increases pursuant to statute or regulation, the City may adjust such hourly wage rates set forth in the Agreement commensurate with the Consumer Price Index All Urban Consumers (CPI-U) for New York-Newark-Jersey City based on the annual average increase for the preceding year of the Term, effective upon the first anniversary date of the Agreement and the first day of each renewal term. If an increase in CPI-U exceeds 5%, the adjustment made under this paragraph 2 will be capped at 5%.
3. For unit prices that are inclusive of wage rates and materials, the Contractor may submit a request for a price adjustment no more than once per year after the first year of the Term. The request shall include the Contractor's proposal for an adjustment to the unit prices to be negotiated along with supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal. Promptly after the Agency receives the request and the data set forth in the preceding sentence, the Agency and the Contractor shall negotiate a price adjustment in the unit prices, effective upon the first anniversary date of the Agreement and the first day of each renewal term. The aggregate of the increases in any unit price made under this clause shall not exceed 10 percent of the original unit price.

EXHIBIT C
INDEMNIFICATION AND INSURANCE

FOR THE FOLLOWING CATEGORIES

Category #8: Environmental Testing Services
Category #11: Building Assessment Teams (Engineers)

ARTICLE 1: PROTECTION OF PERSONS AND PROPERTY, INDEMNIFICATION, AND
NOTIFICATION OF ACCIDENTS

A. Protection of Persons and Property:

1. The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its Subcontractor's operations under this Agreement.
2. The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by negligence, an intentional tortious act or omission, or failure to comply with this Agreement or Law by the Contractor and/or its Subcontractors.

B. Indemnification:

1. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials, employees, and agents ("Indemnitees"), against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the Indemnitees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act of commission or omission, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by the Contractor, the Indemnitees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.
2. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the Indemnitees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the Indemnitees regardless of whether or not the

alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by the Contractor, the Indemnitees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

3. The Contractor's obligation to indemnify, defend and hold harmless the Indemnitees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the Indemnitees to avail themselves of the benefits of such insurance.

C. Notification of Accidents:

1. If there is any injury, offense, loss or damage to person, property, or Work or any accidents arising out of the operations of the Contractor and/or its Subcontractors under this Agreement, the Contractor shall comply with the following notification requirements:
 - a. The Contractor shall make a full and complete report in writing to the Agency and to NYCEM within three Days after it becomes aware of or reasonably should be aware of such injury, offense, loss, damage, or accident.
 - b. The Contractor shall notify insurance carriers as required in Article 2(G)(5), below.

D. Actions By or Against Third Parties:

1. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the Indemnitees without additional compensation all assistance that the Indemnitees may reasonably require of the Contractor.
2. The Contractor shall report to the Agency in writing within five Business Days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

E. Withholding of Payments:

1. If any claim is made or any action is brought against the Indemnitees for which the Contractor may be required to indemnify the Indemnitees pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.
2. If any City property is lost or damaged as set forth in Article 1(A)(2), above, except for normal wear and tear, the City shall have the right to withhold payments under

this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

3. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Article 2, below, has accepted the City's tender of the claim or action without a reservation of rights.
4. The City may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.
5. The rights and remedies of the City provided for in this Article 1(E) are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

ARTICLE 2: INSURANCE

A. *Agreement to Insure*: The Contractor shall maintain the insurance specified. Wherever this Article 2 requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

B. *Workers' Compensation, Employer's Liability, and Disability Benefits Coverage*:

1. The Contractor shall maintain workers' compensation insurance, employers' liability insurance, and disability and paid family leave benefits coverage in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement. The workers' compensation insurance policy shall include a waiver of subrogation in favor of the City of New York.
2. Within 10 Days of award of the Agreement, as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of its workers' compensation insurance and disability benefits and paid family leave coverage (or proof of a legal exemption) to the Agency. ACORD forms are not acceptable proof. The following forms are acceptable:
 - a. Exemption from N.Y. workers' compensation insurance and/or disability and paid family leave benefits insurance.
 - i. Form CE-200 – *Certificate of Attestation of Exemption* (available at http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/requestExemptionOverview.jsp)

- b. Workers' compensation certificate of insurance
 - i. Form C-105.2 – *Certificate of Workers' Compensation Insurance*
 - ii. Form U-26.3 – *State Insurance Fund Certificate of Workers' Compensation Insurance*
 - iii. Form SI-12 – *Certificate of Workers' Compensation Self-Insurance*
 - iv. Form GSI-105.2 – *Certificate of Participation in Workers' Compensation Group Insurance*
- c. Disability and paid family leave benefits certificate of insurance
 - i. Form DB-120.1 – *Certificate of Disability and Paid Family Leave Benefits Coverage*
 - ii. Form DB-155 – *Certificate of Disability Benefits Self-Insurance*

C. *Other Insurance:*

1. Commercial General Liability Insurance: The Contractor shall maintain Commercial General Liability Insurance covering claims for property damage and/or injury, including death arising from any operations under or in connection with this Agreement. Such insurance must:
 - a. Have limits of at least \$2,000,000 per occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 policy aggregate and \$2,000,000 products and completed operations aggregate;
 - b. Be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 00 01;
 - c. Be "occurrence" based rather than "claims-made";
 - d. Include the Indemnitees and any other entity that may be listed in the Task Order for Emergency Response Work as an Additional Insured. The additional insured endorsements or policy provisions must be at least as broad as the latest edition of ISO Form CG 20 26;
 - e. Include an endorsement that is at least as broad as the latest edition of ISO Form CG 20 01 (Primary and Noncontributory – Other Insurance Condition);
 - f. Not include exclusions or limitations of the following coverage attributes:
 - i. contractual liability coverage (including the tort liability of another assumed in a contract) insuring the contractual obligations of the Contractor;

- ii. employers' liability coverage for liability assumed by the Contractor under an "insured contract";
 - iii. coverage for claims arising under New York Labor Law;
 - iv. the applicability of commercial general liability coverage to the Indemnitees as additional insured in respect of liability arising out of claims by employees of the Contractor; and
 - v. explosion, collapse, and underground (XCU).
3. Commercial Automobile Liability Insurance: The Contractor shall maintain Commercial Automobile Liability Insurance in the amount of \$1,000,000 per accident (combined single limit), covering all owned, non-owned, leased, and hired vehicles used in connection with this Agreement. If vehicles are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as the MCS 90 endorsement.
4. Professional Liability Insurance: Contractor must maintain Professional Liability Insurance in the amount of at least \$2,000,000 per claim and \$2,000,000 policy aggregate. The policy must cover liability arising out of the negligent performance of professional services or caused by a negligent error, omission or act of the Contractor or anyone employed by the Contractor. The Contractor shall ensure that all Subcontractors at any tier providing professional services under this Agreement for which Professional Liability Insurance or errors and omissions insurance is reasonably commercially available maintain such insurance.
- If the Professional Liability insurance coverage lapses or is cancelled within three (3) years following completion of services, the named insured must obtain tail coverage, or an extended reporting period endorsement, effective on cancellation or termination of such insurance, unless a new policy is secured with a retroactive date prior to the commencement of services.
5. Contractor's Pollution Liability Insurance: For Category #8, the Contractor shall maintain Contractor's Pollution Liability insurance with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, unless waived by the Agency. Such coverage must be on a per occurrence basis covering the Indemnitees as additional insureds.

D. General Requirements for Insurance Coverage and Policies:

- a. Unless otherwise stated, all insurance required by Article 2(C) must:
 - a. Be maintained with companies that may lawfully issue the required policy;
 - b. Have an A.M. Best rating of at least A-/VII, a Standard & Poor's rating of at least A, a Moody's Investor Service rating of at least A3, or a Fitch Ratings

rating of at least A- unless prior written approval is obtained from the City Corporation Counsel; and

- c. Be primary to, and non-contributing with, any insurance or self-insurance maintained by the Indemnitees with the exception of professional liability insurance.
- b. The Contractor shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the Indemnitees are an insured under the policy.
- c. The Indemnitees' limits of coverage for all types of insurance required pursuant this Agreement shall be the greater of (i) the minimum limits set forth in this Agreement or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

F. Proof of Insurance:

1. For all types of insurance required by the Agreement, the Contractor shall provide proof of insurance in accordance with this Exhibit C within 10 Days of award to the Agency and, again, to the Agency upon award of a Task Order for Emergency Response Work.
2. For policies provided pursuant to Article 2(C), the Contractor shall submit one or more certificates of insurance on ACORD forms or other forms reasonably acceptable to the Commissioner. All such Certificates of Insurance shall certify (a) the issuance and effectiveness of such policies of insurance, each with the specified minimum limits (b) for insurance secured pursuant to the Agreement that the Indemnitees (and any other entity listed in the Task Order for Emergency Response Work) is an Additional Insured; and (c) the company code issued to the insurance company by the National Association of Insurance Commissioners (the NAIC number). All such Certificates of Insurance shall be accompanied by the required additional insured endorsements and, if applicable, loss payee endorsements, and either a duly executed "Certification by Insurance Broker or Agent" in the form attached to this Exhibit C or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier.
3. Documentation confirming renewals of insurance shall be submitted to the Agency at least 10 Days prior to the expiration date of coverage of policies required under this Agreement. Such proofs of insurance shall comply with the requirements of this Exhibit C.
4. The Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Exhibit C upon the demand for such policy by the Agency or the City Corporation Counsel.

G. Operations of the Contractor:

1. The Contractor shall not commence the Work unless and until all required proof has been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of proof does not excuse the Contractor from securing insurance consistent with all provisions of this Exhibit C or of any liability arising from its failure to do so.
2. The Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Agreement and shall be authorized to perform Work only during the effective period of all required coverage.
3. If any of the required insurance policies lapse, are revoked, suspended, cancelled or otherwise terminated, for whatever cause, the Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Commissioner. Upon quitting the Site, except as otherwise directed by the Commissioner, the Contractor shall leave all plant, materials, equipment, tools, and supplies on the Site. Task Order for Emergency Response Work completion time shall continue to run during such periods and no extensions of time will be granted.
4. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 2 shall be cancelled or terminated (or has been cancelled or terminated) for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner and the New York City Comptroller, ATTN: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York 10007. Notwithstanding the foregoing, the Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Article 2.
5. Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article 2, the Contractor shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to the Contractor's own employees) as soon as practicable but no later than 10 Days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials, employees, and agents, as Insured as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

6. In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 2, the Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.
- H. *Subcontractor Insurance*: If the Contractor requires any Subcontractor(s) to maintain insurance covering the Contractor as additional insured, the Contractor shall also require the Subcontractor to cover the Indemnitees as additional insured. For commercial general liability insurance, the additional insured endorsement must be at least as broad as ISO Form CG 20 26.
- I. *Notice*: Wherever reference is made in the Agreement or this Article 2 to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address provided for notices.
- J. *Waiver*: Apart from claims covered by Professional Liability Insurance, the Contractor waives all rights against the Indemnitees, for any damages or losses that are covered under any insurance required under Article 2(C) (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its employees, agents, or Subcontractors.
- K. *Self-Insurance Programs*: If the Contractor utilizes a self-insurance program to satisfy any of the requirements of this Article 2, the Contractor shall disclose such self-insurance program and ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article 2, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.
- L. *Materiality/Non-Waiver*: The Contractor's failure to secure policies in complete conformity with this Article 2, or to give an insurance company timely notice of any sort required in this Agreement or to do anything else required by this Article 2 shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
- M. *Other Remedies*: Insurance coverage provided pursuant to this Exhibit C or otherwise shall not relieve the Contractor of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Agreement or Law.

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

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

[Signature of authorized official, broker, or agent]

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

State of)

) ss.:

County of)

Sworn to before me this ____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

EXHIBIT D
BONDING REQUIREMENTS

Exhibit D is not applicable to the following categories of Work:

- Category #4: Debris Removal;
- Category #5: Debris Removal – Marine Transportation;
- Category #6: Medical Space and Sheltering;
- Category #7: Emergency Citywide Information Technology (IT) Support and Geographic Information Systems (GIS) Services;
- Category #8: Environmental Testing Services;
- Category #9: Supervision, Management and Administrative Services;
- Category #10: Building Demolition;
- Category #11: Building Assessment Teams;
- Category #12: Emergency Transportation Contracts;
- Category #13: Ground Support;
- Category #14: Base Camp; and
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ATTACHMENT E-8: PREVAILING WAGE SCHEDULES

ARTICLE 1: REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND
DISCLOSURES

A. Procurement of the Agreement:

1. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is and will remain in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.
2. For any breach or violation of Legislative Law § 1-k, the Commissioner shall have the right to annul this Agreement without liability, or to deduct from the contract price or consideration, or otherwise recover, the full amount of the fee prohibited by Legislative Law § 1-k. The rights and remedies of the City provided in this Article 1(A) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

B. Conflicts of Interest:

1. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.
2. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This paragraph shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.
3. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

C. Certification Relating to Fair Practices:

1. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:
 - a. The prices and other material terms set forth in this Agreement, including any Task Orders issued under the Agreement, have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;
 - b. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement, including any Task Orders issued under the Agreement, that have been quoted in this Agreement, including any Task Orders issued under the Agreement, and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and
 - c. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.
2. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Article 1(C).

D. Disclosures Relating to Vendor Responsibility:

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

E. Solvency:

The Contractor represents that it is financially solvent. If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States

Bankruptcy Code, the Contractor shall disclose such action to the Agency within seven days of filing.

F. *Authority to Execute Agreement:*

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

G. *Experience, Truthfulness, and Compliance:*

The Contractor represents and warrants that it is sufficiently experienced and competent to perform the Work; the facts stated in its bid or proposal and the information given by it pursuant to the solicitation is true and correct in all respects; and it has read and will comply with all requirements set forth in the Agreement.

ARTICLE 2: LABOR PROVISIONS

A. *Independent Contractor Status:*

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

B. *Employees and Subcontractors:*

All persons who are employed by the Contractor and all the Contractor's Subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, Subcontractors, or Subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its Subcontractors, or its Subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes

of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

C. Removal of Individuals Performing Work:

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

D. Minimum Wage; Living Wage:

1. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Article 2(D) shall be deemed a material breach of this Agreement.
2. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 ("Section 6-109") the following provisions apply. (For the avoidance of doubt, the following provisions apply to Category #14, Base Camp Provider and Category #15, Temporary Labor Contracts.) In accordance with Section 6-109, the Contractor agrees as follows:

- a. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.
- b. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.
- c. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any Subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(c)(2)(a)(iii).
- d. The Contractor and all Subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a Subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Agency).

- e. The Agency will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Agency. The Contractor shall provide the notices to its Subcontractors and require them to be posted and provided to each covered employee. (Such English and Spanish notices are attached as Attachment E-4; notices in other languages are available upon request to the Comptroller).
- f. The Contractor shall ensure that its Subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its Subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No Work may be performed by a Subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the Subcontractor.
- g. Each year throughout the term of the Agreement, whenever issued a Task Order (except Task Order #1) and whenever requesting the City's approval of a Subcontractor, the Contractor shall submit to the Agency an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement (Attachment E-3), identifying any changes to the current certification.
- h. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Agency, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or Subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the City or the Comptroller, where the City discovers that the Contractor or its

Subcontractor(s) failed to comply with the requirements of this Article 2(D) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the City is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

E. Non-Discrimination in Employment:

1. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law § 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.
2. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:
 - a. In the hiring of employees for the performance of Work under this Agreement or any subcontract hereunder, neither the Contractor, Subcontractor, nor any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the Work to which the employment relates;
 - b. Neither the Contractor, Subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of Work under this Agreement on account of race, creed, color, disability, sex or national origin;
 - c. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each

calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

- d. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Article 2(E).

The provisions of this Article 2(E)(2) shall be limited to operations performed within the territorial limits of the State of New York.

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

- a. It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.
- b. It shall be unlawful for any person or any servant, agent or employee of any person, described in the preceding paragraph, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Article 2(E)(3) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

- 4. E.O. 50 -- Equal Employment Opportunity:

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

- i. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
 - ii. Will not discriminate unlawfully in the selection of Subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
 - iii. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
 - iv. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;
 - v. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and
 - vi. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- b. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to

the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

- i. Disapproval of the Contractor; and/or
 - ii. Suspension or termination of the Agreement; and/or
 - iii. Declaring the Contractor in default; and/or
 - iv. In lieu of any of the foregoing sanctions, imposition of an employment program.
- c. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Agency declaring the Contractor to be non-responsible.
- d. The Contractor agrees to include the provisions of the foregoing Articles 2(E)(4)(a)-(c) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Article 2(E)(4)(d).
- e. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Article 2(E)(4)(e).
- f. Nothing contained in this Article 2(E)(4) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

F. *Paid Sick Leave Law:*

1. Introduction and General Provisions.

- a. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.
- b. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City’s Department of Consumer Affairs (“DCA”). DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).
- c. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.
- d. The Contractor must notify the Agency’s ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.
- e. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant Admin. Code § 20-912(g), such employer has the option of providing such employees uncompensated sick time.

2. Pursuant to the PSL and the Rules: Applicability, Accrual, and Use.
- a. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.
 - b. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.
 - c. An employee entitled to sick time pursuant to the PSL may use sick time for any of the following:
 - i. such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
 - ii. such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
 - iii. closure of such employee’s place of business by order of a public official due to a public health emergency; or
 - iv. such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.
 - d. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a

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

- e. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.
- f. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

3. Exemptions and Exceptions. Notwithstanding the above, the PSL does not apply to any of the following:

- a. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);
- b. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
- c. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSL are expressly waived in such collective bargaining agreement;
- d. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSL for such employee;
- e. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- f. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

- g. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
 - h. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.
- 4. Retaliation Prohibited. An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.
- 5. Notice of Rights.
 - a. An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.
 - b. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.
- 6. Records. An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.
- 7. Enforcement and Penalties.
 - a. Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.
 - b. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and

reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLC civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

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

G. Whistleblower Protection Expansion Act

1. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,
 - a. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
 - b. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Article 2(G), he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

- c. Contractor shall post a notice provided by the City (attached hereto as Attachment E-1) in a prominent and accessible place on any site where Work pursuant to the Agreement is performed that contains information about:
 - i. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and
 - ii. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.
- d. For the purposes of this Article 2(G), “adverse personnel action” includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- e. This Article 2(G) is applicable to all of Contractor’s Subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Article 2(G) in all subcontracts with a value in excess of \$100,000.00.

ARTICLE 3: RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS

A. Books and Records:

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

B. Retention of Records:

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Article 3(A), for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and

other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

C. Inspection:

1. At any time during the Agreement or during the record retention period set forth in Article 3(B), the City, including the Agency and the Agency’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 3. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Agency’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.
2. The City shall have the right to have representatives of the City, State or federal government present to observe the services being performed. If observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession’s services in New York State, the Contractor shall promptly inform the Agency or other entity seeking to observe such Work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that Work is being performed in accordance with this Agreement.
3. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Article 3(C).

D. Audit:

1. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Agency, and the Agency's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.
2. Audits by the City, including the Comptroller, the Agency, and the Agency's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.
3. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Agency and by the Comptroller in the exercise of his/her powers under Law.
4. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Article 3(D).

E. No Removal of Records from Premises:

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

F. Electronic Records:

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

G. Investigations Clause:

1. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
2.
 - a. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State, or;
 - b. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;
3.
 - a. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.
 - b. If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon

granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph 5 below without the City incurring any penalty or damages for delay or otherwise.

4. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
 - a. The disqualification for a period not to exceed five years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
 - b. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, Work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
5. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below, in addition to any other information that may be relevant and appropriate:
 - a. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
 - b. 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.
 - c. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

- d. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph 4 above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Paragraph (3)(a) 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.

6. Definitions

- a. The term “license” or “permit” as used in this Article 3(G) shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
- b. The term “person” as used in this Article 3(G) shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- c. The term “entity” as used in this Article 3(G) shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.
- d. The term “member” as used in this Article 3(G) shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

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

H. *Confidentiality:*

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

care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Agency. The obligation under this Article 3(H) to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner of the Agency, in writing or by e-mail, that it received a disclosure demand to disclose such reports, information or data and (2) if requested by the City, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the City the disclosure demand for such reports, information or data.

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

maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

4. The Contractor, and its officers, employees, Subcontractors, and agents shall notify the Agency, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five Business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Article 3(H).
5. At the request of the Agency, the Contractor shall return to the City any and all confidential information in the possession of the Contractor or its Subcontractors. If the Contractor or its Subcontractors are legally required to retain any confidential information, the Contractor shall notify the Agency in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Agency, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Agency does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Article 3(B).
6. The Identifying Information Rider (Attachment E-5) is applicable to contracts for the following categories of Work: Category #2, Construction Services for Temporary Restoration of Housing, Category #6, Medical Space and Sheltering and Category #17, Construction Services for Temporary Restoration of Housing - Multifamily.
7. The HIPAA Rider (Attachment E-6) is applicable to contracts for Category #6: Medical Space and Sheltering.
8. A breach of this Article 3(H) shall constitute a material breach of this Agreement for which the Agency may terminate this Agreement pursuant to Article 8 of the main body of the Agreement. The City reserves any and all other rights and remedies in the event of unauthorized disclosure.

ARTICLE 4: COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST

A. Copyrights and Ownership of Work Product:

1. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.
2. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Agency (or other City agency) and set forth in the license.
3. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
4. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.
5. If the services under this Agreement are supported by a federal or State grant of funds, pursuant to 2 CFR § 200.315(d) (and any applicable State grant agreement terms), the federal and State, if applicable, government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for government purposes: (a) the copyright in any work developed under the Agreement or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.

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

B. Patents and Inventions:

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

C. Pre-existing Rights:

In no case shall Articles 4(A) and (B) apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

D. Antitrust:

The Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and causes of action arising under the antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

ARTICLE 5: CLAIMS

A. Choice of Law:

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

B. Jurisdiction and Venue:

Subject to Article 5(C), the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any

action in breach of this Article 5(B), the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Article 5(B).

C. Resolution of Disputes:

1. Except as provided in Subparagraphs (1)(a) and (1)(b) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Article 5(C) and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.
 - a. This Article 5(C) shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.
 - b. For construction and construction-related services this Article 5(C) shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for Extra Work or disputed Work performed in connection with the Agreement, the conformity of the Contractor's Work to the Agreement, and the acceptability and quality of the Contractor's Work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the head of a City agency makes a determination with which the Contractor disagrees. For construction, this Article 5(C) shall not apply to termination of the Agreement for cause or other than for cause.
2. All determinations required by this Article 5(C) shall be clearly stated and made in writing, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Article 5(C) shall be deemed a non-determination without prejudice that will allow application to the next level.
3. During such time as any dispute is being presented, heard, and considered pursuant to this Article 5(C), the Agreement terms shall remain in full force and effect and, unless otherwise directed by an ACCO or Engineer, the Contractor shall continue to perform Work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the head of a City agency. Failure of the Contractor to continue the Work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Article 5(C) and a material breach of contract.

4. Presentation of Dispute to Agency Head.

- a. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing (“Notice of Dispute”) to the head of the Agency within the time specified herein, or, if no time is specified, within 30 Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.
- b. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head’s ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the Work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Article 5(C) as the Contractor initiating the dispute.

- c. Agency Head Determination. Within 30 Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.
 - d. Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board ("CDRB") pursuant to this Article 5(C). The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Agency Head.
- 5. Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the CDRB, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.
 - a. Time, Form, and Content of Notice. Within 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
 - b. Agency Response. Within 30 Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.
 - c. Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the

Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, City representatives, and any other personnel desired by the Comptroller.

- d. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have 45 Days from his or her receipt of all materials referred to in Article (5)(C)(5)(c) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of 90 Days from the Comptroller's receipt of all the materials. The Contractor may not present its petition to the CDRB until the period for investigation and compromise delineated in this Paragraph has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Agreement.
6. Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:
- a. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Article 5(C) as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;
 - b. the City Chief Procurement Officer (CCPO) or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and
 - c. a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established, and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.
7. Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Article 5(C), the Contractor, within

30 Days thereafter, may petition the CDRB to review the Agency Head determination.

- a. Form and Content of Petition by the Contractor. The Contractor shall present its dispute to the CDRB in the form of a petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the Contractor to, the Comptroller's Office. The Contractor shall concurrently submit four complete sets of the petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.
- b. Agency Response. Within 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.
- c. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.
- d. CDRB Determination. Within 45 Days of the conclusion of all submissions and oral arguments, the CDRB shall render a decision

resolving the dispute. In an unusually complex case, the CDRB may render its decision in a longer period of time, not to exceed 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. Decisions of the CDRB shall only resolve matters before the CDRB and shall not have precedential effect with respect to matters not before the CDRB.

- e. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 Days after the date the parties are formally notified of the CDRB's decision.
 - f. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.
8. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Article 5(C) shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Article 5(C).

D. No Claim Against Officials, Agents, or Employees:

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

E. Waiver:

Waiver by either the City or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be

construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Article 6 of the main body of the Agreement.

F. Claims and Actions Thereon:

1. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.
2. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after Substantial Completion of the Task Order Work (if the defined term “Substantial Completion” is applicable to the type of Task Order Work ordered) or, if the defined term “Substantial Completion” is not applicable to the Task Order Work, within six months of the final payment for such Task Order Work, except that:
 - a. If the Agency exercises its right to terminate the Task Order pursuant to Article 8 of the main body of the Agreement, any such action shall be commenced within six months of termination of the Task Order;
 - b. If the defined term “Substantial Completion” is applicable to the Task Order Work, any claims arising out of events occurring after Substantial Completion of the Task Order Work and before Final Acceptance of the Task Order Work shall be asserted within six months of Final Acceptance of the Work;
 - c. If the defined term “Substantial Completion” is applicable to the Task Order Work, and the Agency exercises its right to complete or cause to complete any or all unsatisfactory punch list Work that remains after the completion date specified in the Final Approved Punch List pursuant to Article 14(C)(2) of Exhibit F (for Categories 1, 3) any such action shall be commenced within six months from the date the Agency notifies the Contractor that it has exercised such right. Any claims for monies deducted, retained or withheld under the provisions of this Agreement shall be asserted within six months after the date when such monies otherwise become due and payable.

G. No Third-Party Rights:

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officers, officials and employees.

ARTICLE 6: APPLICABLE LAWS

A. PPB Rules:

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

B. All Legal Provisions Deemed Included:

It is the intent and understanding of the parties to this Agreement that each and every provision of Law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the Law and without prejudice to the rights of either party hereunder.

C. Severability / Unlawful Provisions Deemed Stricken:

If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the Agreement without affecting the binding force of the remainder.

D. Compliance With Laws:

The Contractor shall perform all Work under this Agreement in accordance with all applicable Laws as are in effect at the time such Work is performed.

E. Unlawful Discrimination in the Provision of Services:

1. Discrimination in Public Accommodations. With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

2. Discrimination in Housing Accommodations. With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.
3. Admin. Code § 6-123. In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.
4. Immigration status. In connection with the Work provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by Law to inquire about such person's immigration status.

F. *Americans with Disabilities Act (ADA):*

1. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Agency to ensure the Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of Work herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, the Contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities,

including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO of the Agency for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

2. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

G. Political Activity:

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

H. Religious Activity:

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

I. Participation in an International Boycott:

1. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq.*, or the regulations of the United States Department of Commerce promulgated thereunder.
2. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.
3. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

J. MacBride Principles Provisions:

1. Local Law No. 34 of 1991 became effective on September 10, 1991 and added Section 6-115.1 of the Admin. Code. The local law provides for certain restrictions on City Contracts to express the opposition of the people of the City to

employment discrimination practices in Northern Ireland to promote freedom of work-place opportunity.

- a. Pursuant to Section 6-115.1, prospective Contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand (\$10,000) dollars, or for construction involving an amount greater than fifteen thousand (\$15,000) dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.
 - b. Prospective Contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five (5%) percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the Agency shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable Law, that it is in the best interest of the City that the contract be awarded to other than the lowest responsible pursuant to Section 313(b)(2) of the Charter.
 - c. In the case of contracts let by other than competitive sealed bidding, if a prospective Contractor does not agree to these conditions, no agency, elected official or the City Council shall award the Agreement to that bidder unless the Agency seeking to use the goods, services or construction certifies in writing that the Agreement is necessary for the agency to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.
2. In accordance with Section 6-115.1 of the Admin. Code, the Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten (10%) percent or greater ownership interest in the Contractor either:
 - a. Have no business operations in Northern Ireland, or
 - b. Shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

3. For purposes of this Article, the following terms shall have the following meanings:
- a. “MacBride Principles” shall mean those principles relating to nondiscrimination in employment and freedom of work-place opportunity which require employers doing business in Northern Ireland to:
 - i. increase the representation of individuals from under-represented religious groups in the workforce, including managerial, supervisory, administrative, clerical and technical jobs;
 - ii. take steps to promote adequate security for the protection of employees from under-represented religious groups both at the work-place and while traveling to and from Work;
 - iii. ban provocative religious or political emblems from the workplace;
 - iv. publicly advertise all job openings and make special recruitment efforts to attract applicants from under-represented religious groups;
 - v. establish layoff, recall, and termination procedures which do not in practice favor a particular religious group;
 - vi. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
 - vii. develop training programs that will prepare substantial numbers of current employees from under-represented religious groups for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade, and improve the skills of workers from under-represented religious groups;
 - viii. establish procedures to assess, identify, and actively recruit employees from under-represented religious groups with potential for further advancement; and
 - ix. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.
4. The Contractor agrees that the covenants and representations in Article 6(J) are material conditions to this Agreement. In the event the Agency receives information that the Contractor who made the stipulation required by this Article 6(J) is in violation thereof, the Agency shall review such information and give the

Contractor an opportunity to respond. If the Agency finds that a violation has occurred, the Agency shall have the right to declare the Contractor in default in default and/or terminate this Agreement for cause and procure supplies, services or Work from another source in the manner the Agency deems proper. In the event of such termination, the Contractor shall pay to the Agency, or the City in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this Agreement and the cost to the City of completing performance of this Agreement either itself or by engaging another contractor or contractors. In the case of a requirement contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the Agency for the uncompleted term of Contractor's Agreement. In the case of a construction contract, the Agency shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this Agreement, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the City hereunder shall be in addition to, and not in lieu of, any rights and remedies the City has pursuant to this Agreement or by operation of Law.

K. Access to Non-Public Areas.

Attachment E-6, the Access to Non-Public Areas Rider, is applicable to contracts for the following categories of Work: Category #2, Construction Services for Temporary Restoration of Housing, Category #6, Medical Space and Sheltering and Category #17, Construction Services for Temporary Restoration of Housing - Multifamily.

ARTICLE 7: ASSIGNMENT

A. Written Consent.

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

B. Request for Consent.

Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Agency giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the Commissioner has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Agency, the Contractor shall provide any other information demonstrating that the proposed

assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the assignee after receiving all requested information. Such assignment, transfer, conveyance or other disposition of this Agreement shall not be valid until filed in the office of the Commissioner and the Comptroller, with the written consent of the Commissioner endorsed thereon or attached thereto.

C. Annulment of Agreement.

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

D. Creditors.

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

E. Assignment by City.

This Agreement may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

ARTICLE 8: FORCE MAJEURE

A. Definition of Force Majeure.

For purposes of this Agreement, a force majeure event is an act or event occurring after the commencement of Work on a Task Order for Emergency Work beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. Excusal of Non-Performance.

The Contractor shall take all commercially reasonable steps to ensure it can perform the Scope of Work including, but not limited to, having multiple vendors for equipment and supplies, securing equipment and supplies from outside the greater New York City metropolitan area, redundant mechanisms for contacting its employees, Subcontractors, and suppliers, and contingency or continuity of operations plans to mitigate risks associated with operating in

disaster impacted areas. In the event that, having complied with the requirements of the previous sentence, the Contractor nevertheless cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of Work) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance, extend the time to complete the Task Order (in accordance with Article 10 of Exhibit F) and/or terminate the Task Order or the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement or a Task Order because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement or Task Order or extend the time to complete the Task Order (in accordance with Article 10 of Exhibit F for Categories 4, 5, 8 and 16, and Article 13A of Exhibit F for Categories 1, 2, 3 and 17). Such a termination shall be deemed to be without cause.

C. Payment.

If the City terminates the Agreement pursuant to this Article 8 of Exhibit E, payment for Work satisfactorily performed shall be made in accordance with Article 8(A) of the Agreement.

ATTACHMENT E-1:
WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER



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

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

**80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU**

OR FILE A COMPLAINT ON-LINE AT:
www.nyc.gov/doi

All communications are confidential



**Or scan the QR Code above
to make a complaint**

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

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

ATTACHMENT E-2:
LIVING WAGE SCHEDULES

(This Attachment E-2 is applicable to contracts for the following categories of Work: Category #14, Base Camp Provider and Category #15, Temporary Laborers—Disaster Response Unskilled Labor)

The Comptroller issues the Living Wage Schedules. Such schedules are included in this Agreement and are available on the Comptroller's website at

<https://comptroller.nyc.gov/services/for-the-public/nyc-wage-standards/wage-schedules>

ATTACHMENT E-3:
LIVING WAGE CERTIFICATION

(This Attachment E-3 is applicable to contracts for the following categories of Work: Category #14, Base Camp Provider and Category #15, Temporary Laborers—Disaster Response Unskilled Labor)

CERTIFICATION

The undersigned affirms and declares under the penalties of perjury, that the following information is true:

The Contractor agrees to comply with the requirements of Admin. Code § 6-109 and with all applicable federal, state and local laws. The Contractor acknowledges that a finding by the City that the Contractor has violated the requirements of Admin. Code § 6-109 may result in the cancellation or rescission of the Agreement.

The Contractor provides the following information. Attach additional sheets if necessary.

1. Procurement Identification Number (PIN) _____
2. Full Name of Contractor _____
Address _____
City _____ State _____ Zip Code _____
3. Full name of the Chief Executive Officer of the Contractor

Address _____
City _____ State _____ Zip Code _____
Telephone Number _____
4. For employees of the Contractor that will be covered employees under this Agreement, state the following:

A. The absolute number of covered employees and the number of full-time equivalent covered employees.

B. For all categories of covered employees, the following information broken down by category:

(1) job classifications of covered employees in each category.

(2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave).

5. For employees of any subcontractor, known at this time, that will be covered employees under this Agreement, state the following:

Full Name of Subcontractor_____

Address_____

City_____ State_____ Zip Code_____

A. The absolute number of covered employees and the number of full-time equivalent covered employees.

B. For all categories of covered employees, the following information broken down by category:

(1) job classifications of covered employees in each category.

(2) the wages and benefits provided covered employees in each category (including a description of individual and family health coverage, and sick, annual and terminal leave).

6. To the extent permitted by Law, provide a record of any instances during the preceding five years in which the Contractor has been found by a court or government agency to have violated federal, state or local laws regulating payment of wages or benefits, labor

relations or occupational safety and health, or, to the extent permitted by law, in which any government body initiated a judicial action, administrative proceeding or investigation of the applicant in regard to such laws.

Dated: _____

By _____
Signature

Name and Title

Must be signed by an officer or duly authorized representative.

ATTACHMENT E-4:
LIVING WAGE NOTICES

(This Attachment E-4 is applicable to contracts for the following categories of Work: Category #14, Base Camp Provider and Category #15, Temporary Laborers—Disaster Response Unskilled Labor)



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

EMPLOYER: _____

WORKSITE ADDRESS: _____

This worksite is covered by New York City prevailing wage/living wage requirements.

Under applicable law, workers employed on this site must be paid prevailing wages (or living wages) and benefits or supplements as set forth in the attached schedules.

If you believe that you have not received the required wages and benefits or supplements, please contact the New York City Comptroller's Office:

- Call (212) 669-4443 or
- Pick up a complaint form in our office:
1 Centre Street, Room 651, New York, NY 10007 or
- Download our complaint form and view all of our prevailing wage and living wage schedules at our website: comptroller.nyc.gov/wages

If you file a written complaint with our office, we will investigate.

It shall be unlawful for any employer to retaliate against, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a prevailing wage/living wage violation, for seeking or communicating information regarding the employees' legal right to prevailing wages/living wages, or for participating in any investigatory or court proceeding relating to non-payment of prevailing wages/living wages.

WAGE SCHEDULES ATTACHED: _____



CIUDAD DE NUEVA A YORK
OFICINA DEL CONTRALOR
SCOTT M. STRINGER

EMPLEADOR:

DIRECCIÓN DEL LUGAR DE TRABAJO:

Este lugar de trabajo está cubierto por los requisitos de salario prevaleciente/salario vital de la ciudad de Nueva York.

Conforme a las leyes vigentes, los trabajadores empleados en este lugar deben recibir el salario prevaleciente (o salario vital) y los beneficios o complementos establecidos en las listas adjuntas.

Si cree que no ha recibido los salarios y beneficios o complementos adecuados, comuníquese con la Oficina del Contralor de la Ciudad de Nueva York:

- Llame al (212) 669-4443 o
- Complete un formulario de quejas en nuestra oficina:
1 Centre Street, Room 651, New York, NY 10007 o
- Descargue nuestro formulario de quejas y vea todas nuestras listas de salario prevaleciente y salario vital en nuestro sitio web: comptroller.nyc.gov/wages

Si presenta una queja por escrito en nuestra oficina, la investigaremos.

Será una práctica ilícita para cualquier empleador tomar represalias, despedir, degradar, suspender, adoptar medidas laborales adversas en relación con los términos y condiciones de empleo o bien discriminar a cualquier empleado por denunciar o reclamar la violación de su salario prevaleciente/salario vital, por buscar o transmitir información relativa al derecho legal del empleado a percibir el salario prevaleciente/salario vital o por participar en cualquier investigación o procedimiento judicial relativo al salario prevaleciente/salario vital.

LISTAS DE SALARIO ADJUNTAS:

ATTACHMENT E-5
IDENTIFYING INFORMATION RIDER

(Attachment E-5 is applicable to contracts for the following categories of Work: Category #2, Construction Services for Temporary Restoration of Housing, Category #6, Medical Space and Sheltering, and Category 17, Construction Services for Temporary Restoration of Housing-Multifamily)

Section 1.01 Background.

Local Laws 245 and 247 of 2017 (codified at New York City Charter (“Charter”) Section 8 subdivision (h) and the Administrative Code of the City of New York (“Admin. Code”) Sections 23-1201 to -1205) are effective June 15, 2018. Such laws apply to human services contracts and other contracts designated by the City Chief Privacy Officer that involve the collection, retention, or disclosure of “Identifying Information” in connection with services provided under a City contract. Accordingly, in connection with the services provided under this Agreement, Contractor may collect, retain, and disclose Identifying Information only in accordance with the requirements of this Identifying Information Rider, the policies and protocols adopted pursuant to Admin. Code Sections 23-1201 to -1205, the other provisions of this Agreement and as otherwise required by law.

Section 1.02 Definitions.

- A. “Agency” means the City agency or office through which the City has entered into this Agreement.
- B. “Agency Privacy Officer” means the person designated to exercise functions under Admin. Code Sections 23-1201 to -1205 by the Agency through which the City is a party to this Agreement.
- C. “City Chief Privacy Officer” means the person designated by the Mayor pursuant to Charter Section 8 subdivision (h) as the City’s Chief Privacy Officer or such person’s designee.
- D. “Exigent Circumstances” means circumstances where collection or disclosure is urgently necessary, such that procedures that would otherwise be required cannot be followed.
- E. “Identifying Information” means any information provided by the City to Contractor or obtained by Contractor in connection with this Agreement that may be used on its own or with other information to identify or locate an individual. Identifying Information includes, but is not limited to: name, sexual orientation, gender identity, race, marital or partnership status, status as a victim of domestic violence or sexual assault, status as a crime victim or witness, citizenship or immigration status, eligibility for or receipt of public assistance or city services, all information obtained from an individual’s income tax records, an individual’s Social Security number, information obtained from any surveillance system operated by, for the benefit of, or at the direction of the New York

City Police Department, motor vehicle information or license plate number, biometrics such as fingerprints and photographs, languages spoken, religion, nationality, country of origin, place of birth, date of birth, arrest record or criminal conviction, employment status, employer information, current and previous home and work addresses, contact information such as phone number and email address, information concerning social media accounts, date and/or time of release from the custody of the Administration for Children's Services, the Department of Correction, or the New York City Police Department, any scheduled court appearances, any scheduled appointments with the City, the Contractor or its subcontractor that provides human services or other services designated by the City Chief Privacy Officer, and any other category of information designated by the City Chief Privacy Officer.

Section 1.03 Collection.

Absent Exigent Circumstances, Contractor shall not collect Identifying Information unless such collection (a) has been approved by the Agency Privacy Officer or the City Chief Privacy Officer and the collection of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (b) is required by law or treaty; (c) is required by the New York City Police Department in connection with a criminal investigation; or (d) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.

Section 1.04 Disclosure.

- A. Absent Exigent Circumstances, Contractor shall not disclose Identifying Information unless such disclosure (a) has been authorized in writing by the individual to whom such information pertains or, if such individual is a minor or is otherwise not legally competent, by such individual's parent, legal guardian, or other person with legal authority to consent on behalf of the individual; (b) has been approved by the Agency Privacy Officer or the City Chief Privacy Officer and the disclosure of such Identifying Information is in furtherance of Contractor's obligations under this Agreement; (c) is required by law or treaty; (d) is required by the New York City Police Department in connection with a criminal investigation; or (e) is required by a City agency in connection with the welfare of a minor or other individual who is not legally competent.
- B. If Contractor discloses an individual's Identifying Information in violation of this Rider, Contractor shall notify the Agency Privacy Officer. In addition, if such disclosure requires notification to the affected individual(s) pursuant to the policies and protocols promulgated by the City Chief Privacy Officer under subdivision 6 of Section 23-1203, in the discretion of the Agency Privacy Officer Contractor shall either (i) make reasonable efforts to notify such individual(s) in writing of the Identifying Information disclosed and to whom it was disclosed as soon as practicable or (ii) cooperate with the Agency's efforts to notify such individual(s) in writing. The City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any law, administrative or judicial order, or the City Chief Privacy Officer to address the disclosure, and

including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a disclosure by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Agency shall provide Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, Contractor shall pay directly for the costs, detailed above, if any.

- C. Section 1.04(B) shall not require any notification that would violate any law or interfere with an investigation or otherwise compromise public safety pursuant to subdivision e of Section 23-1204.

Section 1.05 Exigent Circumstances.

In the event Contractor collects or discloses Identifying Information due to Exigent Circumstances, with no other basis for collection or disclosure under subdivisions b or c of Section 23-1202, Contractor shall send to the Agency Privacy Officer information about such collection or request and disclosure, along with an explanation of why such Exigent Circumstances existed, as soon as practicable after such collection or disclosure. This section shall not require any such notification for collection or disclosure of Identifying Information that: (a) is required by the New York City Police Department in connection with an open criminal investigation; (b) is required by a City agency in connection with an open investigation concerning the welfare of a minor or other individual who is not legally competent; or (c) occurs in the normal course of performing Contractor's obligations under this Agreement and is in furtherance of law enforcement or public health or safety powers of the Agency under Exigent Circumstances.

Section 1.06 Retention.

Contractor shall retain Identifying Information as required by law or as otherwise necessary in furtherance of this Agreement, or as otherwise approved by the Agency Privacy Officer or the City Chief Privacy Officer.

Section 1.07 Reporting.

Contractor shall provide the Agency with reports as requested by the Agency Privacy Officer or City Chief Privacy Officer regarding the collection, retention, and disclosure of Identifying Information by Contractor. Each such report shall include information concerning Identifying Information collected, retained, and disclosed, including: (a) the types of Identifying Information collected, retained, or disclosed; (b) the types of collections and disclosures classified as "routine" and any collections or disclosures approved by the Agency Privacy Officer or City Chief Privacy Officer; and (c) any other related information that may be reasonably required by the Agency Privacy Officer or City Chief Privacy Officer.

Section 1.08 Coordination with Agency Privacy Officer.

The Agency may assign powers and duties of the Agency Privacy Officer to Contractor for purposes of this Agreement. In such event, Contractor shall exercise those powers and duties in accordance with applicable law in relation to the Agreement, and shall comply with reasonable directions of the Agency Privacy Officer and City Chief Privacy Officer concerning coordination and reporting.

Section 1.09 Conflicts with Provisions Governing Records, Audits, Reports and Investigations.

To the extent allowed by law, the provisions of this Rider shall control if there is a conflict between any of the provisions of this Rider and Article 3 of this Exhibit E and other provisions concerning records retention, inspections, audits, and reports designated elsewhere in the Agreement. The provisions of this Rider do not replace or supersede any other obligations or requirements of this Agreement.

Section 1.10 Subcontracts.

- A. Contractor shall include this Rider in all subcontracts to provide human services or other services designated in the policies and protocols of the City Chief Privacy Officer.
- B. Contractor agrees that it is fully responsible to the Agency for the compliance with this Rider by its subcontractors that provide human services or other services designated by the City Chief Privacy Officer.

Section 1.11 Disclosures of Identifying Information to Third Parties.

Contractor shall comply with the City Chief Privacy Officer's policies and protocols concerning requirements for a written agreement governing the disclosure of Identifying Information to a third party.

ATTACHMENT E-6
INTENTIONALLY OMITTED

EXHIBIT F
SUPPLEMENTAL CITY TERMS AND CONDITIONS

Exhibit F is not applicable to the following categories of Work:

- Category #6: Medical Space and Sheltering;
- Category #7: Emergency Citywide Information Technology (IT) Support and Geographic Information Systems (GIS) Services;
- Category #9: Supervision, Management and Administrative Services;
- Category #10: Building Demolition;
- Category #11: Building Assessment Teams;
- Category #12: Emergency Transportation Contracts;
- Category #13: Ground Support;
- Category #14: Base Camp; and
- Category #15: Temporary Laborers – Disaster Response Unskilled Labor.

EXHIBIT G
HIRING AND EMPLOYMENT RIDER

HireNYC and Reporting Requirements

A. Applicability:

This Exhibit G (or “Rider”) is applicable to Agreements for the following categories of Work:

1. Category #10: Building Demolition

and only if the value of a Task Order for Emergency Response Work issued to the Contractor exceeds \$1,000,000 (a “Covered Task Order” in this Exhibit G), provided, however that certain requirements shall apply only as indicated below.

B. Introduction:

This Rider addresses the HireNYC process, including reporting obligations under the HireNYC process, and certain other reporting requirements imposed by Law.

In general, the HireNYC process under this Rider requires the Contractor to enroll with the City’s HireNYC portal found on the SBS website, to disclose all entry to mid-level job opportunities described in this Rider arising from a Covered Task Order and located in New York City, and to agree to interview qualified candidates from HireNYC for those opportunities.

C. Enrollment:

The Contractor shall enroll with the HireNYC system, found at www.nyc.gov/sbs, within 30 Days after issuance of a Covered Task Order. The Contractor shall provide information about the business, designate a primary contact and say whether it intends to hire for any entry to mid-level job opportunities arising from a Covered Task Order and located in New York City, and, if so, the approximate start date of the first hire.

D. Job Posting Requirements:

1. Once enrolled in HireNYC, the Contractor agrees to update the HireNYC portal with all entry to mid-level job opportunities arising from a Covered Task Order and located in New York City, if any, which shall be defined as jobs requiring no more than an associate degree, as provided by the New York State Department of Labor (see Column F of <https://labor.ny.gov/stats/2012-2022-NYS-Employment-Prospects.xls>). The information to be updated includes the types of entry and mid-level positions made available from the Work arising from the Agreement and located in New York City, the number of positions, the anticipated schedule of initiating the hiring process

for these positions, and the contact information for the Contractor's representative charged with overseeing hiring. The Contractor must update the HireNYC portal with any hiring needs arising from the Agreement and located in New York City, and the requirements of the jobs to be filled, no less than three weeks prior to the intended first day of employment for each new position, except with the permission of SBS, not to be unreasonably withheld, and must also update the HireNYC portal as set forth below.

2. After enrollment through HireNYC and submission of relevant information, SBS will work with the Contractor to develop a recruitment plan which will outline the candidate screening process, and will provide clear instructions as to when, where, and how interviews will take place. HireNYC will screen applicants based on employer requirements and refer applicants whom it believes are qualified to the Contractor for interviews. The Contractor must interview referred applicants whom it believes are qualified.
3. After completing an interview of a candidate referred by HireNYC, the Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, the Contractor shall provide the start date of new hires, and additional information reasonably related to such hires, within twenty (20) business days after the start date. In the event the Contractor does not have any job openings covered by this Rider in any given year, the Contractor shall be required to provide an annual update to HireNYC to that effect. For this purpose, the reporting year shall run from the date of the registration of the Agreement and each anniversary date.
4. These requirements do not limit the Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Rider shall be interpreted so as to require the Contractor to employ any particular worker.
5. In addition, the provisions of this Rider shall not apply to positions that the Contractor intends to fill with employees employed pursuant to the job retention provision of Admin. Code § 22-505. The Contractor shall not be required to report such openings with HireNYC. However, the Contractor shall enroll with the HireNYC system pursuant to Section C, above, and, if such positions subsequently become open, then the remaining provisions of this Rider will apply.

E. Breach and Liquidated Damages:

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

2. Furthermore, in the event the Contractor breaches the requirements of this Rider during the Term of the Agreement, the City may hold the Contractor in default of a Covered Task Order.

F. Audit Compliance:

In addition to the auditing requirements set forth in other parts of the Agreement, the Contractor shall permit SBS and the City to inspect any and all records concerning or relating to job openings or the hiring of individuals for Work arising from the Agreement and located in New York City. The Contractor shall permit an inspection within seven Business Days of the request.

G. Other Reporting Requirements:

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

H. Construction Requirements:

1. Construction contractors shall comply with the HireNYC requirements set forth above for all non-trades jobs (e.g., for an administrative position arising out of the Work of the Agreement and located in New York City) as set forth above.
2. In addition, construction contractors shall reasonably cooperate with SBS and the City on specific outreach events, including Hire on the Spot events, for the hiring of trades workers for the Work of a Covered Task Order.
3. Further, a Covered Task Order shall be subject to a project labor agreement if so required elsewhere in this Agreement.

I. Federal Hiring Requirements:

1. The Contractor shall comply with all federal hiring requirements as may be set forth elsewhere in this Agreement, including, as applicable:
 - a. Section 3 of the HUD Act of 1968, which requires, to the greatest extent feasible, economic opportunities for 30 percent of new hires be given to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
 - b. Executive Order 11246, which prohibits discrimination in employment due to race, color, religion, sex or national origin, and requires the implementation of goals for minority and female participation for Work involving any Construction trade.

EXHIBIT H

FEDERAL TERMS AND CONDITIONS

Applicable to all On-Call Emergency Contract Categories

The Federal Terms and Conditions are comprised of three parts, as follows:

PART 1: The Uniform Federal Contract Provisions Rider, which is applicable to all Work, except for Task Order #1 Work

- a. Exhibit 1 to the Uniform Federal Contract Provisions Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.
- b. Exhibit 2 to the Uniform Federal Contract Provisions Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.

PART 2: The FEMA Rider, which is applicable to all Work, except for Task Order #1 Work

PART 3: The CDBG-DR Rider, which is applicable to all Work (except for Task Order #1 Work) unless otherwise specified by the Ordering Agency in a Task Order

- a. Exhibit 1 to the CDBG-DR Rider, is applicable to Construction Work, as defined in Part 1, section A(4), below.
- c. Exhibit 2 to the CDBG-DR Rider, is applicable Construction Work, as defined in Part 1, section A(4), below.

PART 1

UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

(Adapted for the On-Call Emergency Contracts Program in January 2019)

A. Definitions. As used in this Rider:

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

B. Reserved.

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

- (1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the Work performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.

- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (33 U.S.C. §§ 1251-1387) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.
- (4) *Energy Efficiency.* The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
- (5) *Debarment.* The Contractor certifies that neither it nor its principals is currently in a state of debarment, suspension, or other ineligible status as a result of prior performance, failure, fraud, or violation of City laws. The Contractor further certifies that neither it nor its principals is debarred, suspended, otherwise excluded from or ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Contract if knowledge of debarment, suspension or other ineligibility has been withheld by the Contractor.
- (6) *Lobbying.* The Contractor certifies, to the best of its knowledge and belief, that:
- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
 - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract,

grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and

(c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.

(d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(7) *Solid Waste Disposal Act.* Pursuant to 2 CFR § 200.322, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (codified at 42 USC § 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 and <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program> that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.

(9) *Records Retention.* See Article 3 of Exhibit E.

(10) *Records Access.* The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations,

excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

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

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

(12) *Intangible Property.* Provisions governing intangible property are set forth in Article 4, Exhibit E.

D. Special Provisions for Construction Contracts and Construction Related Contracts.

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

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

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation¹, in Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.
- b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.
- c. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), as supplemented by the regulations contained in 29 CFR Part 3, requiring that all laborers and mechanics shall be paid unconditionally and not less often than once a week, and prohibiting all but “permissible” salary deductions.
- d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete

¹ The Davis-Bacon Act is generally not applicable to FEMA grants to the City for disaster recovery and mitigation construction work and so it is unlikely that it will apply to the Task Order Work. However, the Davis-Bacon Act is applicable to CDBG-DR grants to the City and, sometimes, the City uses CDBG-DR funds to supplement FEMA grants. Contractors must consult with the City about the source of federal funding for construction work performed under Emergency Response Task Orders involving construction Work and the applicability of Davis-Bacon Act requirements to such Work.

detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.

- (2) *Equal Employment Opportunity*. Executive Order 11246, as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

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

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

2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.

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

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

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

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed

by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

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

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

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

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

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

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant

to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

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

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

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

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

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

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

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

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

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

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

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

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

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

even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

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

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

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

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

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

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents

(e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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

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

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

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

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

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

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

copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

E. RESERVED.

FEDERAL EXHIBIT 1

NOTICE TO BIDDERS

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

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

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

Goals and Timetables for Minorities

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

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved Construction.

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

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

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

EXHIBIT 2

Federal Labor Standards Provisions (Non-Davis Bacon)
Federal Emergency Management Agency
(Adapted for the On-Call Emergency Contracts Program in January 2019)

Applicability: The Project or Program to which the construction Work covered by this Agreement pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Agreement pursuant to the provisions applicable to such Federal assistance.

A. Compliance with the Copeland “Anti-Kickback” Act.

1. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Contract.
2. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clause in paragraph 1 above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Subcontractor or lower tier Subcontractor with all of these contract clauses.
3. **Breach.** A breach of the contract clauses above may be grounds for termination of the Agreement, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

B. Compliance with the Contract Work Hours and Safety Standards Act. The provisions of this Section B are applicable where the amount of the prime contract exceeds \$100,000.

1. **Overtime requirements.** No Contractor or Subcontractor contracting for any part of the contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this Section B, the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such

District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. **Withholding for unpaid wages and liquidated damages.** The City of New York shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. **Subcontracts.** The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this Section B and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs (1) through (4) of this section B.

C. **Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.
3. The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each Subcontractor. The Contractor shall take such action with respect to any subcontractor as FEMA or the Secretary of Labor shall direct as a means of enforcing such provisions.

PART 2

FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) RIDER

(Adapted for the On-Call Emergency Contracts Program in January 2019)

1. Suspension and Debarment. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:
 - (a) This Agreement is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this Agreement, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.
 - (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the Term of this Agreement and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
2. Davis-Bacon Act. For the purposes of Section D(1)(a) of the Uniform Federal Contract Provisions Rider, compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) is not required of the Contractor pursuant to FEMA regulations. However, if this Agreement is funded by another federal funding source (e.g., the U.S. Department of Housing and Urban Development CDBG or CDBG-DR programs), compliance with the Davis-Bacon Act is required to the extent required by law and as set forth in the contract documents.
3. Reserved.
4. Copeland “Anti-Kickback” Act. The Contractor shall comply with provisions of the Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (A).

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

PART 3

CDBG-DR Rider

(Adapted for the On-Call Emergency Contracts Program in January 2019)

FEDERAL REGISTER NOTICES

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Register Notices applicable to the use of CDBG-DR Funds are typically issued by HUD after a disaster for which HUD grant funds will be provided. The Notice(s) may require changes to this Rider.

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ARTICLE 1. DEFINITIONS

As used in this CDBG-DR Rider:

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

(b) “Agency” means the Contracting Agency, the Ordering Agency, or both.

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

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

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

(f) “Contractor” means the entity executing this Agreement, other than the City.

(g) “Equipment” means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds \$5,000.

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

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

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

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

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

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

[Applicable to Contractors and Subrecipients]

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

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

ARTICLE 3. LABOR REQUIREMENTS

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

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

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

agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

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

ARTICLE 4. RESERVED

ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS

This Agreement is subject to:

- (a) Section 109 of the Act, which requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act. Section 109

also directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 shall apply to programs or activities receiving Federal financial assistance under Title I programs. The Contractor agrees to comply with provisions of 24 CFR Parts 6, 8, and 146.

- (b) Title VIII of the Civil Rights Act of 1968 (P.L. 90-284; 42 U.S.C. §§ 3602-3620), as amended, which prohibits discrimination in the sale or rental of housing and in the provision of brokerage services based on race, color, religion, sex, national origin, disability, or familial status, and which requires affirmative action in the furtherance of Fair Housing objectives.
- (c) Executive Order 11063, as amended by Executive Order 12259, pursuant to regulations issued at 24 CFR Part 107, which prohibits discrimination on the basis of race, color, religion, sex or national origin and requires equal opportunity in housing constructed, operated or provided with federal funds.
- (d) Title VI of the Civil Rights Act of 1964 (P.L. 88-352; 42 U.S.C. §§ 2000d *et seq.*) and implementing regulations in 24 CFR Part 1, which states that no person shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any Program or activity made possible by, or resulting from, this Agreement.
- (e) 24 CFR § 5.109, “Equal participation of faith-based organizations in HUD programs and activities.”
- (f) Consistent with 24 CFR § 570.614, the Contractor warrants that all services, programs, and/or Construction (including design and alteration) under this Agreement shall be performed in accordance with all federal, state and local laws and regulations regarding accessibility standards for persons with disabilities including, but not limited to, the following: Section 504 of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. § 4151-4157), the Uniform Federal Accessibility Standards (Appendix A to 24 CFR Part 40 and Appendix A to 41 CFR Part 101-19, subpart 101-19.6), and the Americans with Disabilities Act (42 U.S.C. § 12131; 47 U.S.C. §§ 155, 201, 218, and 225).

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

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

- (a) For agreements, subcontracts, and subgrants of amounts in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401, Federal Water Pollution control Act (33

U.S.C. §§ 1251, et seq.) Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA).

- (b) The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163). Further, the Contractor shall comply with the construction standards concerning energy efficiency set forth in any HUD Notices.
- (c) This Agreement is subject to laws and authorities listed in 24 CFR § 58.5, including the Historic Preservation Act of 1966 (Section 1 of Pub. L. No. 89-665, as amended by Pub. L. No. 96-515; 54 U.S.C. §§ 100101 and 300101 *et seq.*), the Archeological and Historic Preservation Act of 1974 (P.L. 93-291; 16 U.S.C. §§ 469-469c), Executive Order 11593 and regulations at 36 CFR Part 800. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.
- (d) This Agreement is subject to the Lead-Based Paint Poison Prevention provisions found in 24 CFR § 570.608, the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead Based Paint Hazard Reduction Act of 1992 (U.S.C. §§ 4851-4856, and 24 CFR Part 35, subparts A, B, J, K, and R. This provision is to be included in all subcontracts, for work in connection with this Agreement, which relate to residential structures.
- (e) Pursuant to the provisions in 24 CFR § 570.605, Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. § 4106), and the regulations in 44 CFR Parts 59-79 apply to this Agreement.

ARTICLE 7. UNIFORM RELOCATION ASSISTANCE

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

ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS

Pursuant to 2 CFR § 2400.101 and 24 CFR § 85.1, Contractors is subject to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 (commonly referred to the “Super Circular”), as applicable.

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

- (a) Unearned payments under this Agreement may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by HUD at any time, or if the Grant to the City under the Act is suspended or terminated. Unearned payments received by the Contractor must be returned to the City.

The Contractor agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor shall return such income to the City's Community Development Block Grant Program unless expressly authorized by the City. Such funds are subject to all applicable requirements governing the use of Community Development Block Grant funds. Alternative program requirements concerning the definition of "program income" may be set forth in notices issued by HUD related to the funding.

- (b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and readily accessible.
- (c) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor's chief fiscal officer or its insurer assuring that all persons handling funds received or disbursed under this Agreement are covered by fidelity insurance in an amount equal to cash advances from the City. If the bond is cancelled or coverage is substantially reduced, the Contractor shall promptly notify the Agency of this fact in every case not later than 48 hours. In such event, the Agency shall not disburse any more funds to the Contractor until it has received assurance that adequate coverage has subsequently been obtained.
- (d) No money under this Agreement shall be disbursed by the Agency to any Contractor except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor is in compliance with HUD requirements with regard to accounting and fiscal matters, to the extent they are applicable, and provided that the Agency has completed HUD requirements, including but not limited to environmental certifications pursuant to 24 CFR Part 58.

ARTICLE 10. RECORDS AND AUDITS

- (a) The Contractor shall maintain records in accordance with the requirements elsewhere in this Agreement.
- (b) At such times on such forms as HUD and/or the City may require, there shall be furnished to HUD and/or the City such statements, records, reports, data and information,

as HUD and/or the City may request pertaining to matters covered by this Agreement. At a minimum, such forms will include the following:

- (i) Quarterly Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Quarterly Performance Reports.
 - (ii) Annual Property Register forms for the purpose of tracking the use of CDBG purchased equipment.
- (c) At any time during normal business hours and as often as the City, the Contracting Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor shall make available for examination to the City, HUD, Inspector General, U.S. General Accounting Office and/or representatives of the Comptroller General all of its books, accounts, records, reports, files, and other papers or property with respect to all matters covered by this Agreement and shall permit the City, HUD and/or representatives of the Comptroller General and the U.S. General Accounting Office to audit, examine, make excerpts of, and make transcriptions from such books, accounts, records, reports, files, and other papers or property and to make audits of all contracts, invoices, materials, payrolls, records or personnel, conditions of employment and other data relating to all matters covered by this Agreement.

ARTICLE 11. SUBCONTRACTORS

- (a) The provisions of this Agreement, including but not limited to this CDBG-DR Rider, shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor. The Contractor shall not be discharged from its obligations and liabilities, but shall be liable for all acts and negligence of Subcontractors, and their officers, agents and employees, as if they were employees of the Contractor.
- (b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor.
- (c) The Work furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor, and the Contractor shall remain responsible therefor.

ARTICLE 12. CONFLICTS; EXHIBITS

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

ARTICLE 13. RESERVED.

ARTICLE 14. RESERVED.

ARTICLE 15. RESERVED.

ARTICLE 16. RESERVED

ARTICLE 17. RESERVED.

ARTICLE 18. PERFORMANCE REQUIREMENTS AND REMEDIES

Contractor shall be subject to any performance requirements and remedial provisions and/or liquidated damages set forth in this Agreement. Contractor acknowledges that negative performance evaluations may impair its ability to win future contracts with the City as follows: Under City Procurement Policy Board (PPB) Rules section 4-01, Contractor is subject to performance evaluations at least once annually. The City shall enter such performance evaluations into the PASSPort system or a system that replaces PASSPort. To the extent allowed by the PPB Rules, such performance evaluations shall be considered by the City in:

- (1) making a determination of the Contractor's responsibility or non-responsibility in future City procurements, under PPB Rule section 2-08(g)(1)(ii) and
- (2) deciding to renew or not to renew the Agreement, under PPB Rule section 4-04(c)(10).

FED. EXHIBIT 1

NOTICE TO BIDDERS

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

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth above.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

Goals and Timetables for Minorities

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

Goals and Timetables for Women

From April 1, 1980 until the present 6.9

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved Construction.

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

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

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

EXHIBIT 2

EXHIBIT I
IRAN DIVESTMENT ACT COMPLIANCE RIDER

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

(a) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

(b) The person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to paragraph (b) of subdivision three of Section 165-a of the State Finance Law and maintained by the Commissioner of the Office of General Services.

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

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

(1) The investment activities in Iran were made before the effective date of this section (i.e., April 12, 2012), the investment activities in Iran have not been expanded or renewed after the effective date of this section and the person has adopted, publicized and is implementing a formal plan to cease the investment activities in Iran and to refrain from engaging in any new investments in Iran: or

(2) The City makes a determination that the goods or services are necessary for the City to perform its functions and that, absent such an exemption, the City would be unable to obtain the goods or services for which the contract is offered. Such determination shall be made in writing and shall be a public document.

EXHIBIT J
CONTRACTORS PROPOSAL