

## CONTENTS:

This Contents page is not part of the bid package; it is provided for the convenience of potential bidders downloading the package from the City Record website.

**While a bidder must be aware of and consider all material included in the bid package in formulating its bid, the bid submission will consist of only Part B – Forms to be Completed Prior to Bidding (including: Bidder Information; the Bid Schedule, Total Bid and Bid Bond for any or all awards; Bidder Qualification Statement; Schedule B – Part 2 (unless a full waiver has been received); and Iran Divestment Act Certification Form), printed out, completed and submitted in an envelope, along with any required attachments.**

Navigation aids incorporated into this document for online distribution:

1. Click an item on the Table of Contents (below) to jump to the first page of that section.
2. Click on the “CONTENTS” button where it appears at the bottom of any page to return to this page.

### **Part 1 – Information for Bidders**

Part A – Information for Bidders .....	1
Attachment 1 – Bid Information Summary Sheet .....	18
Attachment 2 – Advertisement for Bids .....	21
Part B –Forms to be Completed Prior to Bidding .....	22
Bidder Information	
Bid Forms for Award-MN	
Bid Forms for Award-BX	
Bid Forms for Award-KQ	
Bid Forms for Award-KS	
Bidder Qualification Statement	
Schedule B – M/WBE Utilization Plan	
Iran Divestment Act Compliance Certification Form	

### **Part 2 – Contract Documents and Specifications**

Contract	
Rider 1 – Iran Divestment Act Compliance Rider	
Rider 2 – Whistleblower Protection Expansion Act Poster	
Rider 3 – M/WBE Requirements	
Exhibit A – Scope of Work	
Attachment A – No Access Procedures	
Exhibit B – Federal Conditions	
Exhibit C – Payment and Performance Bonds	
Exhibit D – Prevailing Wage	
Exhibit E – Certification by (Insurance) Broker or Agent	

THE CITY OF NEW YORK

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

INVITATION TO BID

ON FOUR REQUIREMENTS CONTRACTS  
FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES

IN MANHATTAN (ALL CDS) - AWARD-MN

AND / OR

IN THE BRONX (ALL CDS) - AWARD-BX

AND / OR

IN BROOKLYN (CDS 1-6 AND 16) AND QUEENS (ALL CDS) - AWARD-KQ

AND / OR

IN BROOKLYN (CDS 7-15 AND 17-18) AND STATEN ISLAND (ALL CDS) - AWARD-KS

E-PIN: 80620B0007

PART 1 OF 2: INFORMATION FOR BIDDERS

**DEPARTMENT OF HOUSING PRESERVATION AND  
DEVELOPMENT**

**INFORMATION FOR BIDDERS**

## INFORMATION FOR BIDDERS

### TABLE OF CONTENTS

<b>PART A</b>	<b>INFORMATION FOR BIDDERS .....</b>	<b>1</b>
Article 1	Description and Location of Work .....	1
Article 2	Time and Place for Receipt of Bids .....	1
Article 3	Procurement Policy Board Rules and Definitions .....	1
Article 4	Invitation for Bids and Contract Documents .....	1
Article 5	Pre-Bid Conference .....	2
Article 6	Agency Contact .....	3
Article 7	Existing Conditions and Changed Site Conditions.....	3
Article 8	Examination of Proposed Contract.....	3
Article 9	Form of Bids .....	4
Article 10	Bid Document Quality .....	4
Article 11	Bidder's Oath .....	5
Article 12	Irrevocability of Bid.....	6
Article 13	Acknowledgment of Amendments.....	6
Article 14	Bid Samples and Descriptive Literature .....	6
Article 15	Proprietary Information/Trade Secrets .....	6
Article 16	Pre-Opening Modification or Withdrawal of Bids .....	6
Article 17	Bid Evaluation and Award .....	7
Article 18	Late Bids, Late Withdrawals, and Late Modifications .....	7
Article 19	Withdrawal of Bids .....	7
Article 20	Mistake In Bids .....	8
Article 21	Low Tie Bids .....	9
Article 22	Rejection of Bids.....	10
Article 23	Right to Appeal Determinations of Non-Responsiveness or Non-Responsibility and Right to Protest Solicitations and Awards .....	10
Article 24	Affirmative Action and Equal Employment Opportunity .....	10
Article 25	Procurement and Sourcing Solutions Portal (Passport) Disclosure Filing.....	10
Article 26	Complaints About Bid Process.....	11
Article 27	Bid, Performance, and Payment Security.....	11
Article 28	Failure to Execute Contract and Furnish Security .....	12
Article 29	Power of Attorney .....	12
Article 30	Bidder Responsibilities and Qualification .....	12
Article 31	Employment Reports (Bureau of Labor Services) .....	13
Article 32	Labor Law Requirements.....	13
Article 33	Insurance.....	13

Article 34	Lump Sum Contracts .....	14
Article 35	Unit Price Contracts .....	14
Article 36	City's Limited Tax Exemption .....	15
Article 37	License and Permits .....	15
Article 38	Multiple Prime Contractors.....	15
Article 39	Bid Submission Requirements .....	15
Article 40	Prompt Payment .....	16
Article 41	Registration.....	16
Article 42	Limitation of Awards.....	16
Article 43	VENDEX/Passport Fees .....	16
Article 44	Equal Employment Opportunity.....	17
Article 45	Prevailing Wages .....	17
	Attachment 1 Bid Information Summary Sheet .....	18
	Attachment 2 Copy of Advertisement for Bids.....	21

**PART B FORMS TO BE COMPLETED PRIOR TO BIDDING**

Bidder Information

Bid Schedule for Award-MN

Total Bid for Award-MN

Form of Bid Bond

Bid Schedule for Award-BX

Total Bid for Award-BX

Form of Bid Bond

Bid Schedule for Award-KQ

Total Bid for Award-KQ

Form of Bid Bond

Bid Schedule for Award-KS

Total Bid for Award-KS

Form of Bid Bond

Bidder Qualification Statement

Schedule B – M/WBE Utilization Plan

Iran Divestment Act Compliance Certification Form

**PART A**  
**INFORMATION FOR BIDDERS**

**ARTICLE 1**  
**DESCRIPTION AND LOCATION OF WORK**

The Department of Housing Preservation and Development (the “Agency” or “HPD”) is soliciting bids for four (4) contracts for the installation of self-closing door hinges. A Bidder may submit a bid one or more of those solicitations in accordance with the instructions herein. The description of this procurement and location of the work for which bids are requested (the “Work”) are specified in Attachment 1, the Bid Information Summary Sheet (“Attachment 1”).

**ARTICLE 2**  
**TIME AND PLACE FOR RECEIPT OF BIDS**

- 2.1 Sealed bids shall be received by the Agency on or before the date and hour specified in Attachment 1. All properly submitted bids shall be publicly opened and read aloud at the time and place specified in Attachment 1, in the presence of the Commissioner of HPD or his or her representative (the “Commissioner”), and of any bidders who may desire to be present.
- 2.2 All completed bids must be submitted in a sealed envelope marked with the name and address of the person, firm or corporation presenting it, the bid opening date and time specified for receipt of bids, the solicitation number and bid title. The bid and all other documents requiring signature must be signed and notarized.

**ARTICLE 3**  
**PROCUREMENT POLICY BOARD RULES AND DEFINITIONS**

- 3.1 This Information for Bidders is subject to the New York City Procurement Policy Board Rules (“PPB Rules”). In the event of a conflict between said Rules and a provision of this Invitation for Bidders, the PPB Rules shall take precedence.
- 3.2 The definitions set forth in the PPB Rules shall apply to this Invitation For Bids.

**ARTICLE 4**  
**INVITATION FOR BIDS AND CONTRACT DOCUMENTS**

- 4.1 Except for titles, sub-titles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Invitation for Bids and the Contract resulting from this solicitation and shall be referred to collectively as the “Contract Documents”.
  - A. This Information for Bidders and all Attachments hereto;
  - B. The Bid;
  - C. The Contract, including all exhibits and attachments thereto;

- D. The Budget Director's Certificate;
  - E. The Specifications;
  - F. The Contract Drawings (if applicable);
  - G. All addenda issued by the Commissioner prior to the receipt of bids;
  - H. All provisions required by law to be inserted in this Contract whether actually inserted or not;
  - I. The Notice of Award;
  - J. Performance and Payment Security;
  - K. The Notice to Proceed with Work; and
  - L. All Work Orders, including any Supplemental Work Orders, issued under the Contract.
- 4.2 For particulars as to this procurement, including quantity and quality of any purchase, the extent of the Work or labor to be performed, delivery and performance schedule, and any other special instructions, prospective bidders are referred to the Contract Documents.
- 4.3 Paper Copies of the Bid Documents. Prospective bidders may obtain paper copies of the bid documents from the EOD Contract Unit at 100 Gold Street, 6<sup>th</sup> Floor, New York NY 10038, between the hours of 9:00 AM and 12:00 PM and 2:00 PM and 4:00 PM, Monday through Friday, exclusive of holidays observed by the City of New York. There will be a non-refundable fee of \$25.00 charged for each paper copy of the bid documents, payable by money order, teller's check or certified check made payable to "NYC HPD."

## **ARTICLE 5**

### **PRE-BID CONFERENCE**

- 5.1 A pre-bid conference shall be held as set forth in Attachment 1.
- 5.2 Nothing stated at the pre-bid conference shall change the terms or conditions of the Invitation For Bids unless a change is made by written amendment as provided in the PPB Rules.
- 5.3 Failure to attend a mandatory pre-bid conference shall constitute grounds for the rejection of the bid.
- 5.4 Please notify the Agency Contact Person listed in Attachment 1 of the number of representatives from your firm that will attend the conference at least five (5) City working days before the date of the pre-bid conference.

**ARTICLE 6**  
**AGENCY CONTACT**

Any questions or correspondence relating to this bid solicitation shall be addressed to the "Agency Contact Person" designated in Attachment 1.

**ARTICLE 7**  
**EXISTING CONDITIONS AND CHANGED SITE CONDITIONS**  
*(If Applicable)*

- 7.1 Examination of Site. The bidder awarded the Contract (the "Contractor") must, prior to the commencement of any Work under a Work Order, carefully view and examine the site(s) of the proposed Work, as well as all adjacent areas, and all existing conditions on which the Work may in any way be dependent, and shall immediately report to the Agency any condition(s) that may prevent Contractor from performing the Work in a manner acceptable to the Agency. Contractor shall also seek other usual sources of information for it will be conclusively presumed to have full knowledge of any and all conditions and hazards on, about or above the site(s) relating to or affecting in any way the performance of the Work to be done under the Work Order that were or should have been known to a reasonably prudent contractor.
- 7.2 Changed Conditions. If, during the progress of the Work, Contractor encounter conditions or environmental hazards at the site(s) materially differing from any indicated in the Contract Documents, or such conditions or hazards as could not reasonably have been anticipated by Contractor, which conditions or hazards will materially affect the cost of the Work to be done under a Work Order, the attention of the Commissioner must be called immediately to such conditions or hazards before they are disturbed. The Commissioner shall thereupon promptly investigate the conditions or hazards. If the Commissioner determines that the conditions do so materially differ, and that they could not reasonably have been anticipated by Contractor, the Work Order may be modified with the written approval of the Commissioner.

**ARTICLE 8**  
**EXAMINATION OF PROPOSED CONTRACT**

- 8.1 Request for Interpretation or Correction. Prospective Bidders must examine the Contract Documents carefully and before bidding must make a written request to the Commissioner for an interpretation or correction of every patent ambiguity, inconsistency or error therein which should have been discovered by a reasonably prudent bidder. Such written requests shall be submitted as specified in Attachment 1. The Commissioner's interpretation or correction, as well as any additional Contract provisions the Commissioner may decide to include, will be issued in writing by the Commissioner as an addendum to the Contract, which will be sent to each person recorded as having received a copy of the Contract Documents from the Agency Contact Person, and will also be posted at the place where the Contract Documents are available for the inspection of prospective bidders. Upon such mailing or delivery and



posting, such addendum shall become a part of the Contract Documents, and binding on all bidders, whether or not actual notice of such addendum is shown.

- 8.2 Only Commissioner's Interpretation or Correction Binding. Only the written interpretation or correction so given by the Commissioner shall be binding, and prospective bidders are warned that no other officer, agent or employee of the City is authorized to give information concerning, or to explain or interpret, the Contract.
- 8.3 Subcontractor Solicitation. Documents given to a Subcontractor for the purpose of soliciting the Subcontractor's bid shall include either a copy of the cover of this Invitation For Bids or a separated information sheet setting forth the Project name, the Contract number (if available), the Agency and the Project's location.

## **ARTICLE 9**

### **FORM OF BIDS**

- 9.1 All bids must be submitted upon the prescribed form (the "Bid Form") and must contain: (A) the name, residence and place of business of the person or persons making the bid; (B) the names of all persons interested therein, and if no other person is so interested, such fact must be distinctly stated; (C) a statement to the effect that it is made without any connection with any other person making a bid for the same purpose and that it is in all respects fair and without collusion or fraud; (D) a statement that no member of the City Council of the City of New York or other officer or employee or person whose salary is payable in whole or part from the City Treasury is directly or indirectly interested therein or in the supplies, materials or equipment and work or labor to which it relates, or in any portion of the profits thereof; and (E) a statement that the bidder is not in arrears to the City or to any agency upon a debt or contract or taxes, and is not a defaulter as surety or otherwise upon any obligation to the City to any agency thereof, except as set forth in the bid.
- 9.2 Bids shall be typewritten or written legibly in ink, and shall be signed in ink. Erasures or alterations shall be initialed by the signer in ink.
- 9.3 Bid shall be accompanied by Bid Security, if so required in Attachment 1.
- 9.4 Failure to conform with the requirements of this Article shall result in rejection of the non-conforming bid.

## **ARTICLE 10**

### **BID DOCUMENT QUALITY**

- 10.1 The New York City Office of the Comptroller (the "Comptroller") employs mechanized scanning devices to process the City's contracts and supporting documents. To assist the Agency in complying with the City's requirements for contract registration, bid package submissions shall conform to the City's below listed guidelines for uniform physical attributes to the greatest degree possible.

- 10.2 The bid and all appendices, supporting documents and related materials included as part of the bid submissions:
- A. Shall not be bound with glue, spiral combs, tape, staples or other permanent binding materials.
  - B. Shall be restricted to either 8.5" x 11" or 8.5" x 14" page sizes and shall not contain materials, including divider tabs, that are larger than or unfold to dimensions larger than these standard sizes. (Please note: 8.5" x 11" paper is strongly preferred.)
  - C. Shall incorporate a table of contents.
  - D. Shall make use of both sides of paper.
  - E. Shall be readily decipherable. Off center, third and fourth generation photocopies, and poorly printed copies shall not be acceptable.
  - F. Shall avoid the use of colored paper stock and/or fluorescent highlighting.
- 10.3 Alternatively to subparagraphs (A) through (F), above, bidders may wish to comply with this requirement by designating ONE (1) COPY of their bid as a "REGISTRATION COPY". The registration copy shall be an unbound version of the bid which shall conform to the above standards. The registration copy shall bear the vendor's certification that it is identical to the presentation (other) copies.
- 10.4 Bidders shall ensure that every page in the bid, including all appendices and attachments, be numbered consecutively to facilitate reference and review by the evaluation and selection committee, as appropriate.
- 10.5 Bidders shall ensure that bid submissions do not incorporate materials which are overly repetitive and superfluous or unnecessarily inflate the proposal text.

## **ARTICLE 11**

### **BIDDER'S OATH**

- 11.1 The bid shall be properly signed by an authorized representative of the bidder and the bid shall be verified by the written oath of the authorized representative who signed the bid, that the several matters stated and information furnished therein are in all aspects true.
- 11.2 The making of a materially false statement, willfully or fraudulently, in connection with a bid or any of the forms completed and submitted with the bid may result in the rejection of such bid. If a contract is awarded prior to the discovery of such false statement, the Commissioner shall have the right to terminate that contract. In addition, a bidder who is found to have made a materially false statement may be barred from participating in future City contracts as well as be subject to possible criminal prosecution.

**ARTICLE 12**  
**IRREVOCABILITY OF BID**

The prices set forth in the bid cannot be revoked and shall be effective until the award of the Contract, unless the bid is withdrawn as provided for in Articles 16, 18 and 19, below.

**ARTICLE 13**  
**ACKNOWLEDGMENT OF AMENDMENTS**

The receipt of any amendment to the Contract Documents shall be acknowledged by the bidder in its bid submission.

**ARTICLE 14**  
**BID SAMPLES AND DESCRIPTIVE LITERATURE**

Bid samples and descriptive literature shall not be submitted by the bidder, unless expressly requested elsewhere in the Contract Documents. Any unsolicited bid samples or descriptive literature which are submitted shall not be examined or tested and shall not be deemed to vary any of the provisions of the Contract Documents.

**ARTICLE 15**  
**PROPRIETARY INFORMATION/TRADE SECRETS**

- 15.1 The bidder shall identify those portions of its bid which it deems to be confidential, proprietary information, and/or trade secrets, and provide justification why such materials shall not be disclosed by the City. All materials the bidder desires to remain confidential shall be clearly indicated by stamping the pages on which such information appears, at the top and bottom thereof, with the word "Confidential". Such stamped materials must be easily separable from the non-confidential sections of the bid.
- 15.2 All materials stamped "Confidential" shall be reviewed by the Agency and any decision not to honor a request for confidentiality shall be communicated in writing to the bidder. For those bids which are unsuccessful, all such confidential materials shall be returned to the bidder. Prices, makes and model, or catalog numbers of the items offered, deliveries, and terms of payment shall be publicly available after bid opening regardless of any designation of confidentiality made by the bidder.

**ARTICLE 16**  
**PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS**

- 16.1 Bids may be modified or withdrawn by written notice received in the office designated in Attachment 1 before the time and date set forth therein for the bid opening. A telegraphic, mailgram or facsimile modification or withdrawal shall be effective provided it was received in the manner set forth in the PPB Rules.
- 16.2 If a bid is withdrawn in accordance with this Article, the bid security, if any, shall be returned to the bidder.

**ARTICLE 17**  
**BID EVALUATION AND AWARD**

- 17.1 In accordance with the New York City Charter, the PPB Rules and the terms and conditions of this Invitation For Bids, this Contract shall be awarded, if at all, to the responsible bidder whose bid meets the requirements and evaluation criteria set forth in this Invitation For Bids, and whose bid price is either the most favorable bid price or, if the Invitation For Bids so states, the most favorable evaluated bid price. A bid may not be evaluated for any requirement or criterion that is not disclosed in the Invitation For Bids.
- 17.2 Restrictions. No negotiations with any bidder shall be allowed to take place except under the circumstances and in the manner set forth in the PPB Rules and Section 18.2 below. Nothing herein shall be deemed to permit a contract award to a bidder submitting a higher quality item than that designated in the Invitation For Bids if that bid is not also the most favorable bid.

**ARTICLE 18**  
**LATE BIDS, LATE WITHDRAWALS, AND LATE MODIFICATIONS**

- 18.1 Any bid received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered. Any request for withdrawal or modification received at the place designated in the solicitation after the time and date set for receipt of bids is late and shall not be considered.
- 18.2 The exception to this provision is that a late modification of a successful bid that makes the bid terms more favorable to the City shall be considered at any time it is received.

**ARTICLE 19**  
**WITHDRAWAL OF BIDS**

- 19.1 Except as provided for in Article 16 above, a bidder may not withdraw its bid before the expiration of forty five (45) days after the date of the opening of bids; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual award.
- 19.2 If within sixty (60) days after the execution of the Contract resulting from this Invitation for Bids, the Commissioner fails to fix the date for commencement of work by written notice to the successful bidder, that bidder, at its option, may ask to be relieved of its obligation to perform the work called for by written notice to the Commissioner. If such notice is given to the Commissioner, and the request to withdraw is granted, the bidder waives all claims in connection with this Contract.

**ARTICLE 20**  
**MISTAKE IN BIDS**

- 20.1 General. Correction or withdrawal of a bid because of an inadvertent, non-judgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a non-judgmental mistake is permissible, but only to the extent that it is not contrary to the interest of the City or the fair treatment of other bidders.
- 20.2 Mistake Discovered Before Bid Opening. A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in Article 16 above.
- 20.3 Mistakes Discovered After Bid Opening / Confirmation of Bid: When the Agency knows or has reason to conclude after bids have been publicly opened that a mistake has been made, it shall request from the bidder written verification of the bid. If the bidder alleges a mistake in bid after bid opening but before award, the bid may be corrected or withdrawn upon written approval of the Agency Chief Contracting Officer ("ACCO") if the following conditions are met:
- A. Minor Informalities. Minor informalities are matters of form, rather than substance, evident from the bid document or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The Contracting Officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the City. Examples include the failure of a bidder to:
    - i return the number of signed bids required by the IFB, or
    - ii acknowledge receipt of an amendment to the IFB, but only if it is clear from the bid that the bidder received the amendment and intended to be bound by its terms, or the amendment involved had a negligible effect on price, quantity, quality, or delivery.
  - B. Mistakes Where Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
  - C. Mistakes Where Intended Correct Bid is Not Evident. Mistakes may not be corrected after bid opening. In accordance with General Municipal Law §103(11), however, where a unilateral error or mistake has been discovered in the bid, a bidder may be permitted to withdraw such a bid upon the written approval of the ACCO if the following conditions are met:

- i the mistake is known or made known to the Agency prior to the awarding of the Contract or within three days after the opening of the bid, whichever period is shorter; and
- ii the price bid was based on an error of such magnitude that enforcement would be unconscionable; and
- iii the bid was submitted in good faith and the bidder submits credible evidence that the mistake was a clerical error as opposed to a judgment error; and
- iv the error in the bid is actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material, goods, or services made directly in the compilation of the bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of the original work paper, documents, or materials used in the preparation of the bid sought to be withdrawn; and
- v it is possible to place the City in the same condition that had existed prior to the receipt of the bid.

Unless otherwise required by law, the sole remedy for a bid mistake in accordance with this Article shall be withdrawal of that bid, and the return of the bid bond or other security, if any, to the bidder. Thereafter, the Agency may, in its discretion, award the Contract to the next lowest responsible bidder or rebid the Contract. Any amendment to or reformation of a bid or a contract to rectify such an error or mistake therein is strictly prohibited.

## **ARTICLE 21**

### **LOW TIE BIDS**

- 21.1 When two (2) or more low responsive bids from responsible bidders are identical in price, meeting all the requirements and criteria set forth in the Invitation For Bids, the ACCO will break the tie in the following manner and order of priority:
- A. Award to a certified New York City small minority or woman-owned business entity bidder;
  - B. Award to a New York City bidder;
  - C. Award to a certified New York State small, minority or woman-owned business bidder;
  - D. Award to a New York State bidder.
- 21.2 If two or more bidders still remain equally eligible after application of the criteria in Paragraph 21.1 above, award shall be made by a drawing by lot limited to those bidders. The bidders involved shall be invited to attend the drawing. A witness shall be present to verify the drawing and shall certify the results on the bid tabulation sheet.

**ARTICLE 22**  
**REJECTION OF BIDS**

- 22.1 Rejection of Individual Bids. The Agency may reject a bid if:
- A. the bidder fails to furnish any of the information or forms required to be submitted as part of its Bid; or if
  - B. the bidder is determined to be not responsible pursuant to the PPB Rules; or if
  - C. the bid is determined to be non-responsive pursuant to the PPB Rules; or if
  - D. the bid, in the opinion of the ACCO, contains unbalanced bid prices and is thus non-responsive, unless the bidder can show that the prices are not unbalanced for the probable required quantity of such items, or if the imbalance is corrected pursuant to Article 20 above.
- 22.2 Rejection of All Bids. The Agency, upon written approval by the ACCO, may reject all bids and elect to resolicit bids in accordance with the PPB Rules.

**ARTICLE 23**  
**RIGHT TO APPEAL DETERMINATIONS OF NON-RESPONSIVENESS OR NON-RESPONSIBILITY AND RIGHT TO PROTEST SOLICITATIONS AND AWARDS**

The bidder has the right to appeal a determination of non-responsiveness or non-responsibility and has the right to protest a solicitation and award. For further information concerning these rights, the bidder is directed to the PPB Rules.

**ARTICLE 24**  
**AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY**

This Invitation to Bid is subject to applicable provisions of Federal, State and local Laws and executive orders requiring affirmative action and equal employment opportunity.

**ARTICLE 25**  
**PROCUREMENT AND SOURCING SOLUTIONS PORTAL (PASSPORT)**  
**DISCLOSURE FILING**

*(formerly known as Vendor Information Exchange System (VENDEX) Forms or Certificate of No Change)*

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

**ARTICLE 26**  
**COMPLAINTS ABOUT BID PROCESS**

The Comptroller is charged with the audit of contracts in New York City. Any vendor who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Comptroller, Bureau of Contract Administration, 1 Centre Street, Room 727, New York, New York; telephone number (212) 669-2323.

**ARTICLE 27**  
**BID, PERFORMANCE, AND PAYMENT SECURITY**

- 27.1 Bid Security. The Mayor's Office of Contract Services or the ACCO may require the submission of bid security, if any, in an amount and type specified in Attachment 1. Bid security shall accompany the bid in the bid envelope. Bid security shall be returned to unsuccessful bidders.
- 27.2 Performance and Payment Security. Performance and Payment Security will be required as specified in Attachment 1.
- 27.3 If Contractor fails to deliver the required performance and payment security, the Agency, in its sole and absolute discretion, may rescind the award of the Work Order and may hold Contractor in default of the Contract. Thereafter, the Agency, in its sole and absolute discretion, may award such Work Order(s) to any other contractor(s) with which the Agency has a contract, may bid such Work Order as a separate contract, may have such Work Order(s) performed by its own personnel, and/or may take such other and further actions to have such Work Order completed as may be permitted under the New York City Charter, the Procurement Policy Board Rules and any other governing law or rule. In the event the Agency determines that Contractor shall be held in default with respect to the Contract for failure to deliver the required performance and payment security, the Agency shall proceed in accordance with the applicable Article(s) of the Contract.
- 27.4 Acceptable Security. Acceptable security for bids, performance and payment shall be limited to:
- A. a one-time bond in a form satisfactory to the City;
  - B. a bank certified check or money order;
  - C. City Bonds;
  - D. other financial instruments as determined by the Mayor's Office of Contract Services in consultation with the Comptroller.



**ARTICLE 28**  
**FAILURE TO EXECUTE CONTRACT AND FURNISH SECURITY**

In the event of failure of the successful bidder to execute the Contract and furnish the required security within ten (10) days after notice of the award of the Contract, the deposit of the successful bidder or so much thereof as shall be applicable to the amount of the award made shall be retained by the City, and the successful bidder shall be liable for and hereby agrees to pay on demand, the difference between the price bid and the price for which such Contract shall be subsequently awarded, including the cost of any required reletting and less the amount of such deposit. No plea of mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid. Further, should the bidder's failure to comply with this Article cause any funding agency, body or group (Federal, State, City, public, private, etc.) to terminate, cancel or reduce the funding on this Project, the bidder in such event shall be liable also to the City for the amount of actual funding withdrawn by such agency on this Project less the amount of the forfeited deposit.

**ARTICLE 29**  
**POWER OF ATTORNEY**

Attorneys in fact who sign performance or payment bonds must file with each bond a certified copy of their power of attorney to sign said bond or bonds.

**ARTICLE 30**  
**BIDDER RESPONSIBILITIES AND QUALIFICATION**

- 30.1 Bidders must include with their bids all information necessary for a determination of bidder responsibility, as set forth in the Contract Documents, including, without limitation, the Bidder Qualification Statement included in Part B of this Bid Package, which the bidder shall complete in its entirety and submit with its bid proposal.
- 30.2 The Agency may require any bidder or prospective bidder to furnish all books of account, records, vouchers, statements or other information concerning the bidder's financial status for examination as may be required by the Agency to ascertain the bidder's responsibility and capability to perform the Work under the Contract. If required, a bidder must also submit a sworn statement setting forth such information as the Agency may require concerning present and proposed plant and equipment, the personnel and qualifications of its working organizations, prior experience and performance record.
- 30.3 Oral Examination on Qualifications. In addition thereto, and when directed by the Agency, the bidder, or a responsible officer, agent or employee of the bidder, must submit to an oral examination to be conducted by the Agency in relation to its proposed tentative plan and schedule of operations, and such other matters as the Agency may deem necessary in order to determine the bidder's ability and responsibility to perform the Work in accordance with the Contract. Each person so examined must sign and verify a stenographic transcript of such examination noting thereon such collections as such person may desire to make.

- 30.4 If the bidder fails or refuses to supply any of the documents or information set forth in this Article or fails to comply with any of the requirements hereof, the Agency may reject the bid.

### **ARTICLE 31**

#### **EMPLOYMENT REPORTS (BUREAU OF LABOR SERVICES)**

- 31.1 Contractor may be obligated to submit completed Equal Employment Opportunity forms upon Agency request. Such forms as are required by the Agency shall be obtained by Contractor from HPD's Office of Equal Opportunity, including, without limitation:
- A. Employment Report: In accordance with Executive Order No. 50 (1980) as modified by Executive Order 108 (1986), the filing of a completed Employment Report is a requirement of doing business with the City of New York for contractors who have been identified as the lowest bidder for a supply or service contract valued at over \$100,000 who employs 50 or more people. Please note that subcontractors, suppliers, or vendors performing on the Contract who meet these conditions must also file an Employment Report.
  - B. Contract Certificate (if bid is less than \$1,000,000 and more than \$750,000)
  - C. Less Than 50 Employees Certificate: Contractors whose company or any of its facilities performing on the Contract has fewer than 50 employees need only submit a "Less Than 50 Employees Certificate", even if the Contract value exceeds \$100,000. Please note that this applies to any subcontractor, supplier or vendor to Contractor and any of its facilities performing on the Contract which has fewer than 50 employees.
- 31.2 Failure to submit these forms as required may result in the disqualification of the bid.

### **ARTICLE 32**

#### **LABOR LAW REQUIREMENTS**

The successful bidder will be required to comply strictly with all Federal, State and local labor laws and regulations, including but not limited to providing on-the-job training opportunities and payment of prevailing wages.

### **ARTICLE 33**

#### **INSURANCE**

Bidders are advised that the insurance requirements contained in Article 7 of the Contract will be regarded as a material term of the Contract. Bidders are advised to carefully read this Article as the successful bidder will be required to comply with all the provisions contained therein throughout the Term of this Contract.

**ARTICLE 34**  
**LUMP SUM CONTRACTS**

- 34.1 Comparison of Bids. Bids on lump sum contracts will be compared on the basis of the lump sum price bid, adjusted for alternate prices bid, if any.
- 34.2 Lump Sum Bids for "General Construction Work" which include excavation shall include all necessary excavation work defined in the Scope of Work or the Specifications as being included in the lump sum bid. The bidder shall also bid a unit price for the additional cost of excavating material which is defined in the Specifications as excavation for which additional payment will be made, if applicable. The total estimated additional cost of removing such material will be taken as the quantity set forth in the Engineer's estimate multiplied by the unit price bid. This total estimated cost of additional excavation shall be added to the lump sum bid for the General Construction Work for the purpose of comparing bids to determine the low bidder.
- 34.3 Variations from Engineer's Estimate. The Engineer's estimate of the quantity of excavation for which additional payment will be made is approximate only and is given solely to be used as a uniform basis for the comparison of bids and such estimate is not to be considered as part of this Contract. The quantities actually required to complete the Work may be more or less than the quantities in the Engineer's estimate and, if so, no action for damages or for loss of profits shall accrue to Contractor by reason thereof.

**ARTICLE 35**  
**UNIT PRICE CONTRACTS**

- 35.1 Comparison of Bids. Bids on unit price contracts shall be compared on the basis of a total estimated price, arrived at by taking the sum of the estimated quantities of such items multiplied by the corresponding unit prices, and including any lump sum bids on individual items, in accordance with the Engineer's estimate of quantities of such items multiplied by the corresponding unit prices, and including any lump sum bids on individual items, in accordance with the Engineer's estimate of quantities set forth in the bid forms contained in Part B of the Bid Package.
- 35.2 Variations from Engineer's Estimate. If during the progress of the Work, the actual quantity of items required to complete the Work of any unit item approaches the estimated quantity, and due to errors, site conditions, changes in design or any other reason, it appears that the actual quantity necessary to complete the Work shall exceed the estimated quantity by twenty five (25%) percent, Contractor shall immediately notify the Engineer of such anticipated overruns.
- 35.3 Bidders are warned that the Engineer's estimate of quantities on the various items of Work and materials is approximate only, given solely to be used as a uniform basis for the comparison of bids, and is not to be considered part of this Contract. The quantities actually required to complete the Work may be less or more than so estimated, and if so, no action for damages or for loss of profits shall accrue to Contractor by reason thereof.

- 35.4 Contractor shall not be compensated for Work performed in excess of one hundred twenty five (125%) percent of the estimated quantities in the bid schedule without written authorization from the Engineer.
- 35.5 Contractor will be paid at the unit price bid for quantities up to one hundred twenty five (125%) percent of the estimated quantities listed in the bid schedule. If quantities on any item exceed one hundred twenty five (125%) percent of the estimate, the City reserves the right and Contractor agrees to renegotiate the unit price bid to a new unit price for such quantities. If the City and Contractor cannot agree to a new price then the City, if it requires additional units of the item, shall order Contractor, and Contractor agrees, to perform the additional Work on a time and material basis for the actual and reasonable cost but in no event at a cost exceeding the bid price.

**ARTICLE 36**  
**CITY'S LIMITED TAX EXEMPTION**

Unless this Contract indicates otherwise, the City is exempt from the payment of Federal, State and local taxes on tangible personal property sold to the City pursuant to the Contract. The bid prices must be exclusive of such taxes and shall be so construed. Bidders should carefully read Article 9 of the Contract.

**ARTICLE 37**  
**LICENSE AND PERMITS**

The successful bidder will be required to obtain all necessary licenses and permits necessary to perform the work.

**ARTICLE 38**  
**MULTIPLE PRIME CONTRACTORS**

If more than one prime contractor will be involved on this Project, all contractors are required to examine the Invitation for Bid packages for all other parts of the Project.

**ARTICLE 39**  
**BID SUBMISSION REQUIREMENTS**

- 39.1 The following forms, all of which are contained in Part B of the Bid Package attached hereto, are to be completed and submitted as part of the bid:
- A. Bidder Information sheet
  - B. the Bid Forms (Bid Schedules and Total Bid Pages for Awards MN, BX, KQ, and/or KS);
  - C. Bid Security (if required, see Attachment 1);
  - D. the Bidder Qualification Statement;
  - E. Schedule B, the M/WBE Utilization Plan; and
  - F. the Iran Divestment Act Compliance Certification Form

- 39.2 Non-compliance with any of the above bid submission requirements may result in the disqualification of the bid.

#### **ARTICLE 40**

##### **PROMPT PAYMENT**

- 40.1 The Prompt Payment provisions set forth in the PPB Rules in effect at the time of this solicitation will be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in the PPB Rules.
- 40.2 Contractor must submit a proper invoice to receive payment, except where the Contract provides that Contractor shall be paid at predetermined intervals without having to submit an invoice for each scheduled payment. Determinations of interest due shall be made in accordance with the provisions of the PPB Rules and General Municipal Law §3-a.

#### **ARTICLE 41**

##### **REGISTRATION**

The Contract resulting from this solicitation shall not be binding or of any force unless it is registered in accordance with Section 328 of the New York City Charter and the PPB Rules, and shall continue in force only after annual appropriation of funds by the City of New York and certification as hereinabove set forth.

#### **ARTICLE 42**

##### **LIMITATION OF AWARDS.**

If the bidder has existing HPD contracts, HPD reserves the right to consider such contracts when determining, in HPD's sole discretion, whether such bidder has the capacity to perform the proposed contract and to award to the next lowest responsible bidder if a negative determination is made. The award of the proposed contract will be in the overall best interest of the City.

#### **ARTICLE 43**

##### **VENDEX/PASSPORT FEES**

Pursuant to PPB Rule 2-08(f)(2), 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. 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 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 value for the contract resulting from this RFP is estimated to be less than \$1,000,000.00.

**ARTICLE 44**  
**EQUAL EMPLOYMENT OPPORTUNITY**

- 44.1 HPD has adopted a policy to provide equal opportunity in employment for all qualified persons and to prohibit discrimination in employment because of actual or perceived race, color, creed, religion, religious practice, political beliefs or affiliations, ancestry, national origin, sex, sexual orientation, gender, disability or other handicap, age, military status, marital / family status, partnership status, arrest or conviction record, status as a victim of domestic violence, stalking or sex offenses, unemployment status, or status with regard to public assistance or any other class protected by federal, state, or local law to promote the full realization of equal employment opportunity through a continuing affirmative program of compliance. Affirmative action means that Contractor must do more than merely support non-discrimination. It means taking positive steps to recruit, employ and develop qualified or qualifiable minority group members in all job categories of work and advancement. The Bidder's attention is called to the various provisions set forth in the Contract Documents with respect to providing equal opportunity and prohibiting discrimination in employment.
- 44.2 Prior to the award of the Contract, if requested to do so by the Agency, the low bidder must attend a pre-award conference to be held in the offices of EOD for the purpose of acquainting the bidder with the statutory and contractual requirements and those specific measures which shall constitute an affirmative program of implementation. After a pre-award conference and prior to the award, the low bidder shall prepare a written statement which describes specific steps being undertaken for providing minority group members with equal opportunity in training and apprenticeship programs, journeyman recruitment, and all other aspects of employment ("Program of Affirmative Action"). The result shall be to assure that there are minority group members employed in all trades and all phases of contracts.
- 44.3 No letter of award or approval of a subcontractor shall be issued without the prior approval of the Program of Affirmative Action by EOD.

**ARTICLE 45**  
**PREVAILING WAGES**

Bidders are advised that the Prevailing Wage requirements contained in Article 29 of the Contract will be regarded as a material term of the Contract. Bidders are advised to carefully read this Article as the successful bidder will be required to comply with all the provisions contained therein throughout the Term of this Contract.

**ATTACHMENT 1**  
**BID INFORMATION SUMMARY SHEET**

**DESCRIPTION OF WORK:** The Installation of Self-Closing Door Hinges in accordance with the specifications therefor and addenda thereto. The Contract will be awarded for the total contract price indicated under "Location of Work" below for a period of Three (3) Years with the option to renew for an additional term of One (1) Year at the sole discretion of HPD.

**LOCATION OF WORK:** City and/or privately owned buildings, as designated by HPD, in the boroughs and Community Districts ("CDs") indicated below:

<b>Award</b>	<b>Primary Contract Areas</b>	<b>Total Contract Price</b>
8350-MN	Manhattan (All CDs)	\$ 875,000.00
8350-BX	The Bronx (All CDs)	\$ 875,000.00
8350-KQ	Brooklyn (CDs 1-6 and 16) and Queens (All CDs)	\$ 875,000.00
8350-KS	Brooklyn (CDs 7-15 and 17-18) and Staten Island (all CDs)	\$ 875,000.00

**HIGHLY RECOMMENDED PRE-BID CONFERENCE:** A pre-bid conference will be held at 11 AM on Monday, May 18, 2020 via Webex internet/telephone conference only; in person attendance is not available. This pre-bid conference is not prerequisite to bidding on this project, but attendance is highly recommended.

Meeting website: <https://nychpd.webex.com> Meeting number: 710 536 330 Password: Hinge0518

OR Join by phone: 646-992-2010 US Toll (NYC) or 408-418-9388 US Toll. Access code: 710 536 330

**THE DEADLINE FOR SUBMITTING BIDS IS: BEFORE 1 PM ON Wednesday, June 24, 2020**

Bids must be submitted by commercial delivery service to: NYC Dept of HPD, Mail Room, 100 Gold Street, Section 1-R, New York, NY 10038, and received there by the stated Deadline. **NO BIDS WILL BE ACCEPTED AFTER THIS DEADLINE.** Envelope should be marked "Sealed Bid - Hinges."

**BID OPENING:** Bids shall be publicly opened and read aloud at 2 PM on the Deadline date stated above. Members of the public may attend the bid opening via Webex internet/telephone conference only; in person attendance is not available.

Meeting website: <https://nychpd.webex.com> Meeting number: 715 010 032 Password: Hinges0624

OR Join by phone: 646-992-2010 US Toll (NYC) or 408-418-9388 US Toll. Access code: 715 010 032

**AGENCY CONTACT PERSON:**

**Brian C. Saunders**, 212-863-6590 or 7882

[contracts@hpd.nyc.gov](mailto:contracts@hpd.nyc.gov)

**Email the Agency Contact Person for assistance with any difficulty downloading the BID PACKAGE from the City Record website.**

**FUNDING:**

☒ **FEDERALLY FUNDED**

☐ **NON-FEDERALLY FUNDED**

**BID SECURITY:** FIVE PERCENT (5%) Bond or Deposit is required for:

- Federally funded contracts where the contract price exceeds the simplified acquisition threshold defined at 48 CFR 2.101 (currently \$250,000.00), and
- Non Federally funded contracts where the contract price is over \$1,000,000.

**PERFORMANCE AND PAYMENT BONDS:** Performance and Payment security will be required per individual Work Order for ONE HUNDRED PERCENT (100%) of the total price of the Work Order when the total price of the Work exceeds the following applicable threshold:

- the simplified acquisition threshold defined at 48 CFR 2.101 (currently \$250,000.00) if the work order is Federally funded, and
- \$1,000,000 if the work order is other than Federally funded.

For each work order where Performance and Payment security is required, Contractor must deliver to the City (1) an executed bond in the value of such work order to secure the faithful performance of such work order, and (2) an executed bond in the value of such work order to secure the payment of all persons performing labor or furnishing materials in connection with such work order.

**INSURANCE:** Provision of insurance policies and/or certificates of insurance, as specified in Article 7 of the Contract shall be required by the Agency prior to the Award of Contract.

**MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION:**

This solicitation is subject to Section 6-129 of the Administrative Code of the City of New York. **Bidders must comply with the terms contained in the Rider for Minority-Owned and Women-Owned Business Enterprises Requirements (M/WBE Requirements), which is attached to and made a part of the Contract and includes Schedule B – M/WBE Utilization Plan ("Schedule B").** Part I of Schedule B provides the Participation Goals for this solicitation.

M/WBE firms are certified as such by the NYC Department of Small Business Services (SBS), located at 110 William Street, 2nd Floor, New York, NY 10038. The SBS Online Directory of Certified Businesses, located at <http://nyc.gov/buycertified>, is the only source which may be used to determine M/WBE status in accordance with the provisions of the M/WBE Requirements.

A prospective bidder may request a total or partial waiver of the Participation Goals in accordance with the provisions of the M/WBE Requirements by utilizing the form, "Schedule B - Part III - Request for Waiver of Participation Goals." Such request must include all applicable, required information and any supporting documentation which might assist HPD in its review of the waiver request; must bear the original signature of an authorized representative of the prospective bidder; and must be received by the Agency Contact Person, **by 4:00 PM on Friday, June 5, 2020**, at the



Emergency Operations Division, 100 Gold Street, Room 6-M3, New York, New York 10038, or by email to the Agency Contact at [contracts@hpd.nyc.gov](mailto:contracts@hpd.nyc.gov).

Bidders will receive a response to waiver requests at least two (2) days before the bid due date.

All bidders must complete and submit with their bids, Schedule B, Part II: Bidder/Proposer M/WBE Utilization Plan, unless a full waiver of the Participation Goals has been granted. Failure to do so will result in the bid being found to be non-responsive.

**QUESTIONS REGARDING THIS PROCUREMENT:** All questions regarding this procurement, including any requests for interpretation or correction of the Contract Documents in accordance with Article 8 of the Information for Bidders, should be sent by email to the Agency Contact Person at [contracts@hpd.nyc.gov](mailto:contracts@hpd.nyc.gov). All questions and/or requests for interpretation or correction must be received by the Agency no later than 4 PM on Tuesday, May 19, 2020, so that all questions and written responses may be given to all prospective bidders in advance of the M/WBE waiver request due date.

**ATTACHMENT 2**  
**COPY OF ADVERTISEMENT FOR BIDS**

**DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**

For the Installation of Self-Closing Door Hinges in accordance with the specifications therefor and addenda thereto. The proposed contract (E-PIN 80620B0007) shall be subject to all equal opportunity provisions as required by federal, state and local statutes, rules, and regulations.

Bid documents are available for free download from the City Record Online at [www.nyc.gov/cityrecord](http://www.nyc.gov/cityrecord). Any potential bidder having difficulty downloading the package may Email the Agency Contact for assistance at [contracts@hpd.nyc.gov](mailto:contracts@hpd.nyc.gov).

Sealed bids will be received on or before 1 PM on Wednesday, June 24, 2020, by commercial delivery service at NYC Dept of HPD, Mail Room, 100 Gold Street, Section 1-R, New York, NY 10038. Bids shall be publicly opened and read at the date and time specified in the Information for Bidders.

**NOTE:** If so indicated, a pre-bid Conference will be held at the date, time, and place specified in the Information for Bidders

**PART B**  
**FORMS TO BE COMPLETED PRIOR TO BIDDING**

Bidder Information

Bid Forms for Award MX

Bid Forms for Award BX

Bid Forms for Award KQ

Bid Forms for Award KS

Bidder Qualification Statement

Iran Divestment Act Compliance Certification Form

**THE CITY OF NEW YORK  
DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT  
OFFICE OF ENFORCEMENT AND NEIGHBORHOOD SERVICES  
BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES  
FOUR AWARDS**

EOD BID #: **8350**E-PIN: **80620B0007****BIDDER INFORMATION**

<b>Award</b>	<b>Primary Contract Areas</b>	<b>Total Contract Price</b>
8350-MN	Manhattan (All CDs)	\$ 875,000.00
8350-BX	The Bronx (All CDs)	\$ 875,000.00
8350-KQ	Brooklyn (CDs 1-6 and 16) and Queens (All CDs)	\$ 875,000.00
8350-KS	Brooklyn (CDs 7-15 and 17-18) and Staten Island (all CDs)	\$ 875,000.00

Name of Bidder: \_\_\_\_\_

Bidder is (check one, as case may be, and state Social Security or Federal Employer Identification Number):

☐ Individual: \_\_\_\_\_☐ Partnership: \_\_\_\_\_☐ Corporation: \_\_\_\_\_

Residence of Bidder (if an Individual): \_\_\_\_\_

Place of Business of Bidder: \_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

Date of Bid: \_\_\_\_\_

A. (1) If bidder is a partnership, fill in the following blanks:

Name of Partners

Residence of Partners

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) Attach a copy of the most recent certified financial statement, annual report or accountant's statement.

B. (1) If bidder is a corporation, fill in the following blanks:

Organized under the laws of the State of \_\_\_\_\_

Name and Address of President: \_\_\_\_\_

\_\_\_\_\_

Name and Address of Secretary: \_\_\_\_\_

\_\_\_\_\_

Name and Address of Treasurer: \_\_\_\_\_

\_\_\_\_\_

Names, home addresses and telephone numbers of **all** other officers:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) For each member of the Board of Directors list name, home address and telephone number.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(3) Attach hereto a copy of the Corporation's certificate of incorporation.

(4) Attach hereto a copy of the most recent certified financial statement, annual report or accountant's statement.

C. (1) If bidder is a limited liability company, fill in the following blanks:

Organized under the laws of the State of \_\_\_\_\_

Is the limited liability company member-managed or manager-managed?

\_\_\_\_\_

Name and Address of President: \_\_\_\_\_

\_\_\_\_\_

Name and Address of Secretary: \_\_\_\_\_

\_\_\_\_\_

Name and Address of Treasurer: \_\_\_\_\_

\_\_\_\_\_

Names, home addresses and telephone numbers of **all** other officers:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(2) For each member or manager that is vested with the power of management of the limited liability company, list name, home address and telephone number.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(3) Attach hereto a copy of the limited liability company's articles of organization.

(4) Attach hereto a copy of the most recent certified financial statement, annual report or accountant's statement.

D. (1) If the bidder is a sole proprietorship doing business under a trade name, list the person doing so with that person's office and home addresses and telephone numbers.

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(2) Attach hereto a copy of the most recent certified financial statement, annual report, accountant's statement or Federal tax return.

E. The above-named bidder affirms and declares:

1. The said bidder is of lawful age and the only one interested in this bid, and that no person, firm, or corporation other than the hereinabove named has any interest in this bid, of the contract proposed to be taken.

2. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies that as to his own organization, under penalty of perjury, and to the best of its knowledge and belief: (i) The prices which have been quoted in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, with any other bidder or with any competitor or potential competitor; (ii) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, prior to opening, directly or indirectly to any other bidder or to any competitor or potential competitor ; and (iii) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

3. No councilman or other officer or employee or person whose salary is payable in whole or in part by the City is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates; or in any of the profits thereof.

4. Said bidder is not in arrears to the City upon debt, contract, or taxes, and is not in default, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City or the State of New York ("State"), nor is there any proceeding pending relating to the responsibility or qualifications of the bidder to receive public contracts. The bidder shall also state in the bid the Employer Identification Number.

5. (a) The bidder, as an individual, or as a member, partner, director or officer of the bidder if the same be a firm, partnership, or corporation, executes this document expressly warranting and representing that should this bid be accepted by the City and the Contract awarded him, he and his subcontractors engaged in the performance of the Contract (i) will comply with the provisions of Section 6-108 of the City Administrative Code and the nondiscrimination provisions of Section 220e of the State Labor Law as more expressly and in detail set forth in the Contract; (ii) will comply with the provisions of Section 6-109 of the Administrative Code of the City of New York in relation to minimum wages and other stipulations as more expressly and in detail set forth in the Contract; (iii) have complied with the provisions of the aforesaid laws since their respective effective dates; and (iv) will post notices, to be furnished by the City, setting forth the requirements of the aforesaid law in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the Contract can readily view it, and will continue to keep such notices posted until all the supplies, materials and equipment or all the work, labor and services required to be furnished or rendered by Contractor has been accepted by the City.

(b) In the event of breach or violation of any of the foregoing, the bidder may be subject to damages, liquidated or otherwise, cancellation of the contract and suspension as a bidder for a period of three (3) years.

(c) (The words, "the bidder", "he", "his" and "him" where used herein shall mean the individual bidder, firm, partnership or corporation executing this bid form).

6. Said bidder has visited and examined the site of the work and has carefully examined the Contract in the form approved by the City's Corporation Counsel, and will execute the Contract and perform all its items, covenants and conditions, and will provide, furnish and deliver all the work, materials, supplies, tools and appliances for all labor and materials necessary or required for the hereinbefore named work in strict conformity with the Contract.

7. The bidder agrees to be subject to and to perform all the covenants, terms and conditions of the General Conditions, the Special Conditions (if any), the Specifications, the Federal Conditions (if any), and the Equal Opportunity provisions annexed to the Contract.

8. (a) The City is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the City pursuant to the provisions of this Contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the bidder or a subcontractor, or to supplies and materials, which, even though they are consumed, are not incorporated into the completed work (consumable supplies), and the bidder and his subcontractors shall be responsible for any pay and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.



(b) The bidder and his subcontractors and materialmen shall obtain any and all necessary Contractor Exempt Purchase Certificates or resale certificates from the appropriate governmental agency or agencies, and furnish a Contractor Exempt Purchase Certificate or resale certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the work covered by this Contract.

9. (a) Contractor agrees to sell and the City agrees to purchase all materials other than consumable supplies, required, necessary or proper for or incidental to the construction of the Project covered by this Contract.

(b) Contractor agrees to construct the Project and to perform all work, labor and services required, necessary or proper for or incidental thereto. The sum so paid pursuant to this Contract for supplies, materials, work, labor and services required hereunder shall be in full consideration for the performance by Contractor for all his duties and obligations under this Contract.

(c) The purchase by Contractor of the supplies and materials sold hereunder shall be a purchase of procurement for resale and therefore not subject to the State or City Sales or Compensating Use Taxes or any such taxes of cities or counties. The sales of such supplies and materials by Contractor to the City is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by it, properly executed, acknowledged and delivered assuring to the City titles to such supplies and materials, free of liens and encumbrances, and Contractor shall mark or otherwise identify all such materials as the property of the City.

(d) Title to all materials to be sold by Contractor to the City pursuant to the provisions of this Contract, shall immediately vest in and become the sole property of the City upon delivery of such supplies and materials to the site and prior to its becoming a part of the permanent structure. Notwithstanding such transfer of title, Contractor shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of this Contract, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to the City, until such time as the work covered by the Contract is fully accepted by the City. Such transfer of title shall in no way affect any of Contractor's obligations hereunder. In the event that, after title has passed to the City, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to Contractor.

(e) The purchase by subcontractors of supplies and materials to be sold hereunder shall also be deemed a purchase or procurement for resale to Contractor (either directly or through other subcontractors) and therefore not subject to the aforesaid Sales or Compensation Use Taxes, provided that the subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction.

10. In the event any of the provisions of the Contract shall be deemed to be in conflict with the Bid Package or shall create any ambiguity, then the Contract shall control.

11. The price listed below is for all work to be performed at the sites under this Contract.

12. The certifications and the Summary Bid Price Breakdown for all classes of work annexed to this Bid are hereby made a part hereof. The undersigned hereby certifies that s/he is authorized to execute this bid on behalf of the bidder and further certifies that the bidder has all requisite qualifications specified in the bid and contract documents.

NAME OF BIDDER: \_\_\_\_\_  
(Please print or type)

By: \_\_\_\_\_  
(Signature of Partner, Corporate Officer or Proprietor)

**AFFIX  
CORPORATE SEAL**

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

Date: \_\_\_\_\_

**BID SCHEDULE FOR AWARD-MN**  
**BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES**  
**E-PIN: 80620B0007      EOD BID# 8350-MN**  
**MANHATTAN (ALL CDS)**

**Notes:**

1. Prices bid and accepted by HPD will determine the Contractor's payment for services rendered. In the event Bid Prices deviate significantly from agency estimates, a bid may be deemed unbalanced and may be rejected. A bid which does not include a price for each and every line item may be deemed non-responsive.
2. **Bids are being submitted for a Requirements Contract which will be awarded for a maximum contract price that will not exceed \$875,000.00 regardless of the amount listed in the Total Bid Price below.** The Estimated Quantities listed are for bid comparison only and do not represent a fixed number of items to be ordered, nor do they commit HPD to order a minimum or maximum quantity of any item.
3. **BID PRICES ARE INCLUSIVE OF LABOR, EQUIPMENT, PROFIT, AND OVERHEAD**

ITEM #	WORK REQUIRED	UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
1	Installation of up to 4 hinges on the first door on a Work Order	\$	2,500	\$
2	Installation of up to 4 hinges on each additional door on a Work Order (within one building)	\$	500	\$
<b>TOTAL BID PRICE: \$</b>				

By presenting this bid, the Bidder agrees that the Total Contract Price for this contract will be \$875,000.00 regardless of Bidder's Total Bid Price.

Name of Contractor: \_\_\_\_\_

Initials: \_\_\_\_\_

**TOTAL BID FOR AWARD-MN**  
**BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES**  
**E-PIN: 80620B0007      EOD BID# 8350-MN**  
**MANHATTAN (ALL CDS)**

**STATEMENT OF BID, SIGNATURE AND NOTARIZATION**

Total Bid: \$ \_\_\_\_\_

Total Bid in Words: \_\_\_\_\_

\_\_\_\_\_ Dollars\*

Bidder's company name printed \_\_\_\_\_

Bidder's company address: \_\_\_\_\_

Bidder's Signature: \_\_\_\_\_

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

Bidder's Title: \_\_\_\_\_

***\*Note: In the case of any discrepancy between the bid price in words and that in figures, the lowest bid will be considered the price bid. All additions and extensions are subject to audit.***

Attest: \_\_\_\_\_ (Corporate Seal)

**ACKNOWLEDGMENT OF PRINCIPAL**

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

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

**FORM OF BID BOND**

**NOTE: BID BOND IS NOT REQUIRED FOR ANY BID WHICH DOES NOT EXCEED TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00).**

**KNOW ALL MEN BY THESE PRESENTS**, that we, \_\_\_\_\_  
(the "Principal"), and \_\_\_\_\_  
(the "Surety"), are held and firmly bound to THE CITY OF NEW YORK (the "City"), or to its successors and assigns in the penal sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_) lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

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

- (a) Within ten (10) days after notification by the City execute in quadruplicate and deliver to the City all the executed counterparts of the contract in the form set forth in the Contract Documents, in accordance with the Proposal as accepted; and
- (b) Furnish a performance bond and separate payment bond (collectively, the "Payment and Performance Bonds"), as may be required by the City for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory to the City in all respects and shall be executed by good and sufficient sureties; and
- (c) In all respects perform the agreement created by the acceptance of the Proposal as provided in the article entitled "Information for Bidders," bound herewith and hereby made a part hereof, or if the City shall reject the Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

In the event that the Proposal shall be accepted and the Contract be awarded to him, the Surety hereunder agrees subject only to the payment by the Principal of the premium therefor, if requested by the City, to write the Payment and Performance Bonds in the form set forth in the Contract Documents.

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

There shall be no liability under this bond if, in the event of the acceptance of the Proposal by the City, either a performance bond or a payment bond, or both, shall not be required by the City on or before the thirty-ninth (39th) day after the date on which the City signs the Contract.

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

**IN WITNESS WHEREOF**, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

Principal

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

\_\_\_\_\_  
Surety

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

**ACKNOWLEDGMENT OF PRINCIPAL**

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**AFFIX ACKNOWLEDGEMENTS AND JUSTIFICATION OF SURETIES**

**BID SCHEDULE FOR AWARD-BX**  
**BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES**  
**E-PIN: 80620B0007 EOD BID# 8350-BX**  
**THE BRONX (ALL CDS)**

**Notes:**

1. Prices bid and accepted by HPD will determine the Contractor's payment for services rendered. In the event Bid Prices deviate significantly from agency estimates, a bid may be deemed unbalanced and may be rejected. A bid which does not include a price for each and every line item may be deemed non-responsive.
2. **Bids are being submitted for a Requirements Contract which will be awarded for a maximum contract price that will not exceed \$875,000.00 regardless of the amount listed in the Total Bid Price below.** The Estimated Quantities listed are for bid comparison only and do not represent a fixed number of items to be ordered, nor do they commit HPD to order a minimum or maximum quantity of any item.
3. **BID PRICES ARE INCLUSIVE OF LABOR, EQUIPMENT, PROFIT, AND OVERHEAD**

ITEM #	WORK REQUIRED	UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
1	Installation of up to 4 hinges on the first door on a Work Order	\$	2,500	\$
2	Installation of up to 4 hinges on each additional door on a Work Order (within one building)	\$	500	\$
<b>TOTAL BID PRICE: \$</b>				

By presenting this bid, the Bidder agrees that the Total Contract Price for this contract will be  
**\$875,000.00 regardless of Bidder's Total Bid Price.**

**Name of Contractor:** \_\_\_\_\_

**Initials:** \_\_\_\_\_

**TOTAL BID FOR AWARD-BX**  
**BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES**  
**E-PIN: 80620B0007 EOD BID# 8350-BX**  
**THE BRONX (ALL CDS)**

**STATEMENT OF BID, SIGNATURE AND NOTARIZATION**

Total Bid: \$ \_\_\_\_\_

Total Bid in Words: \_\_\_\_\_

\_\_\_\_\_ Dollars\*

Bidder's company name printed \_\_\_\_\_

Bidder's company address: \_\_\_\_\_

Bidder's Signature: \_\_\_\_\_

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

Bidder's Title: \_\_\_\_\_

***\*Note: In the case of any discrepancy between the bid price in words and that in figures, the lowest bid will be considered the price bid. All additions and extensions are subject to audit.***

Attest: \_\_\_\_\_ (Corporate Seal)

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

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



## FORM OF BID BOND

**NOTE: BID BOND IS NOT REQUIRED FOR ANY BID WHICH DOES NOT EXCEED TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00).**

**KNOW ALL MEN BY THESE PRESENTS**, that we, \_\_\_\_\_  
(the "Principal"), and \_\_\_\_\_  
(the "Surety"), are held and firmly bound to THE CITY OF NEW YORK (the "City"), or to its successors and assigns in the penal sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_) lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

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

- (a) Within ten (10) days after notification by the City execute in quadruplicate and deliver to the City all the executed counterparts of the contract in the form set forth in the Contract Documents, in accordance with the Proposal as accepted; and
- (b) Furnish a performance bond and separate payment bond (collectively, the "Payment and Performance Bonds"), as may be required by the City for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory to the City in all respects and shall be executed by good and sufficient sureties; and
- (c) In all respects perform the agreement created by the acceptance of the Proposal as provided in the article entitled "Information for Bidders," bound herewith and hereby made a part hereof, or if the City shall reject the Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

In the event that the Proposal shall be accepted and the Contract be awarded to him, the Surety hereunder agrees subject only to the payment by the Principal of the premium therefor, if requested by the City, to write the Payment and Performance Bonds in the form set forth in the Contract Documents.

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

There shall be no liability under this bond if, in the event of the acceptance of the Proposal by the City, either a performance bond or a payment bond, or both, shall not be required by the City on or before the thirty-ninth (39th) day after the date on which the City signs the Contract.

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

**IN WITNESS WHEREOF**, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

Principal

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

\_\_\_\_\_  
Surety

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

**ACKNOWLEDGMENT OF PRINCIPAL**

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**AFFIX ACKNOWLEDGEMENTS AND JUSTIFICATION OF SURETIES**

**BID SCHEDULE FOR AWARD-KQ**  
**BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES**  
**E-PIN: 80620B0007      EOD BID# 8350-KQ**  
**BROOKLYN (CDS 1-6 AND 16) AND QUEENS (ALL CDS)**

**Notes:**

1. Prices bid and accepted by HPD will determine the Contractor's payment for services rendered. In the event Bid Prices deviate significantly from agency estimates, a bid may be deemed unbalanced and may be rejected. A bid which does not include a price for each and every line item may be deemed non-responsive.
2. **Bids are being submitted for a Requirements Contract which will be awarded for a maximum contract price that will not exceed \$875,000.00 regardless of the amount listed in the Total Bid Price below.** The Estimated Quantities listed are for bid comparison only and do not represent a fixed number of items to be ordered, nor do they commit HPD to order a minimum or maximum quantity of any item.
3. **BID PRICES ARE INCLUSIVE OF LABOR, EQUIPMENT, PROFIT, AND OVERHEAD**

ITEM #	WORK REQUIRED	UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
1	Installation of up to 4 hinges on the first door on a Work Order	\$	2,500	\$
2	Installation of up to 4 hinges on each additional door on a Work Order (within one building)	\$	500	\$
<b>TOTAL BID PRICE: \$</b>				

By presenting this bid, the Bidder agrees that the Total Contract Price for this contract will be \$875,000.00 regardless of Bidder's Total Bid Price.

Name of Contractor: \_\_\_\_\_

Initials: \_\_\_\_\_

**TOTAL BID FOR AWARD-KQ**  
**BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES**  
**E-PIN: 80620B0007      EOD BID# 8350-KQ**  
**BROOKLYN (CDS 1-6 AND 16) AND QUEENS (ALL CDS)**

**STATEMENT OF BID, SIGNATURE AND NOTARIZATION**

Total Bid: \$ \_\_\_\_\_

Total Bid in Words: \_\_\_\_\_

\_\_\_\_\_ Dollars\*

Bidder's company name printed \_\_\_\_\_

Bidder's company address: \_\_\_\_\_

Bidder's Signature: \_\_\_\_\_

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

Bidder's Title: \_\_\_\_\_

***\*Note: In the case of any discrepancy between the bid price in words and that in figures, the lowest bid will be considered the price bid. All additions and extensions are subject to audit.***

Attest: \_\_\_\_\_ (Corporate Seal)

**ACKNOWLEDGMENT OF PRINCIPAL**

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

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

**FORM OF BID BOND**

**NOTE: BID BOND IS NOT REQUIRED FOR ANY BID WHICH DOES NOT EXCEED TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00).**

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

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- (b) Furnish a performance bond and separate payment bond (collectively, the "Payment and Performance Bonds"), as may be required by the City for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory to the City in all respects and shall be executed by good and sufficient sureties; and
- (c) In all respects perform the agreement created by the acceptance of the Proposal as provided in the article entitled "Information for Bidders," bound herewith and hereby made a part hereof, or if the City shall reject the Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

In the event that the Proposal shall be accepted and the Contract be awarded to him, the Surety hereunder agrees subject only to the payment by the Principal of the premium therefor, if requested by the City, to write the Payment and Performance Bonds in the form set forth in the Contract Documents.

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**IN WITNESS WHEREOF**, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

Principal

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

\_\_\_\_\_  
Surety

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

**ACKNOWLEDGMENT OF PRINCIPAL**

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**AFFIX ACKNOWLEDGEMENTS AND JUSTIFICATION OF SURETIES**

**BID SCHEDULE FOR AWARD-KS****BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES****E-PIN: 80620B0007 EOD BID# 8350-KS****BROOKLYN (CDS 7-15 AND 17-18) AND STATEN ISLAND (ALL CDS)****Notes:**

1. Prices bid and accepted by HPD will determine the Contractor's payment for services rendered. In the event Bid Prices deviate significantly from agency estimates, a bid may be deemed unbalanced and may be rejected. A bid which does not include a price for each and every line item may be deemed non-responsive.

2. **Bids are being submitted for a Requirements Contract which will be awarded for a maximum contract price that will not exceed \$875,000.00 regardless of the amount listed in the Total Bid Price below.** The Estimated Quantities listed are for bid comparison only and do not represent a fixed number of items to be ordered, nor do they commit HPD to order a minimum or maximum quantity of any item.

3. **BID PRICES ARE INCLUSIVE OF LABOR, EQUIPMENT, PROFIT, AND OVERHEAD**

**By presenting this bid, the Bidder agrees that the Total Contract Price for this contract will be \$875,000.00 regardless of Bidder's Total Bid Price.**

ITEM #	WORK REQUIRED	UNIT PRICE	ESTIMATED QUANTITY	TOTAL PRICE
1	Installation of up to 4 hinges on the first door on a Work Order	\$	2,500	\$
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<b>TOTAL BID PRICE: \$</b>				

**Name of Contractor:** \_\_\_\_\_

**Initials:** \_\_\_\_\_

**TOTAL BID FOR AWARD-KS**  
**BID FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES**  
**E-PIN: 80620B0007 EOD BID# 8350-KS**  
**BROOKLYN (CDS 7-15 AND 17-18) AND STATEN ISLAND (ALL CDS)**

**STATEMENT OF BID, SIGNATURE AND NOTARIZATION**

Total Bid: \$ \_\_\_\_\_

Total Bid in Words: \_\_\_\_\_

\_\_\_\_\_ Dollars\*

Bidder's company name printed \_\_\_\_\_

Bidder's company address: \_\_\_\_\_

Bidder's Signature: \_\_\_\_\_

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

Bidder's Title: \_\_\_\_\_

***\*Note: In the case of any discrepancy between the bid price in words and that in figures, the lowest bid will be considered the price bid. All additions and extensions are subject to audit.***

Attest: \_\_\_\_\_ (Corporate Seal)

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

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



## FORM OF BID BOND

**NOTE: BID BOND IS NOT REQUIRED FOR ANY BID WHICH DOES NOT EXCEED TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00).**

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(the "Surety"), are held and firmly bound to THE CITY OF NEW YORK (the "City"), or to its successors and assigns in the penal sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_) lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us bind ourselves, and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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

- (a) Within ten (10) days after notification by the City execute in quadruplicate and deliver to the City all the executed counterparts of the contract in the form set forth in the Contract Documents, in accordance with the Proposal as accepted; and
- (b) Furnish a performance bond and separate payment bond (collectively, the "Payment and Performance Bonds"), as may be required by the City for the faithful performance and proper fulfillment of such Contract, which bonds shall be satisfactory to the City in all respects and shall be executed by good and sufficient sureties; and
- (c) In all respects perform the agreement created by the acceptance of the Proposal as provided in the article entitled "Information for Bidders," bound herewith and hereby made a part hereof, or if the City shall reject the Proposal, then this obligation shall be null and void; otherwise to remain in full force and effect.

In the event that the Proposal shall be accepted and the Contract be awarded to him, the Surety hereunder agrees subject only to the payment by the Principal of the premium therefor, if requested by the City, to write the Payment and Performance Bonds in the form set forth in the Contract Documents.

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

There shall be no liability under this bond if, in the event of the acceptance of the Proposal by the City, either a performance bond or a payment bond, or both, shall not be required by the City on or before the thirty-ninth (39th) day after the date on which the City signs the Contract.

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

**IN WITNESS WHEREOF**, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

Principal

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

Surety

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

**ACKNOWLEDGMENT OF PRINCIPAL**

State of New York                    )  
  ) ss:  
County of \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
NOTARY PUBLIC

**AFFIX ACKNOWLEDGEMENTS AND JUSTIFICATION OF SURETIES**

**BIDDER QUALIFICATION STATEMENT*****THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE BID***

Failure to submit this form, completed, prior to award of Contract may render your bid non-responsive.

A bidder will not be considered qualified and his bid will be non-responsive if the responses submitted on this form indicate (a) that the bidder will not be able to commence and finish the Contract Work promptly and (b) that the bidder has taken on or will be taking on so much work that, in the opinion of HPD, the bidder will not be able to perform in accordance with the terms of the Contract.

It is presently expected that work will commence on \_\_\_\_\_ (the "Commencement Date") and be completed on \_\_\_\_\_ (the "Termination Date"). These dates are estimates only which do not constitute a contractual obligation of the City.

- (1) (a) Will you be able to commence work on the Commencement Date?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

- (b) Will you be able to finish work on the Termination Date?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

- (2) What is the total number of contracts, City and/or private, under which you will be performing work as of the Commencement Date and what is their total dollar amount?

City: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

Private: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

- (3) If you have any City contracts, are you performing all work on those contracts in a timely manner?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

- (4) What is the number of additional contracts, City or private, under which you anticipate being obligated to start work before the Termination Date and what is their anticipated total dollar amount?

City: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

Private: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

- (5) How many qualified employees do you have who could work on this Contract? \_\_\_\_\_

- (6) How many of those qualified employees will be assigned to the Contract on the Commencement Date and for each business day until the Termination Date?  
\_\_\_\_\_

- (7) How many additional qualified employees will be working on this Contract before the Termination Date? \_\_\_\_\_.

- (8) How many qualified full-time supervisory employees or managers will be assigned to this Contract each business day? \_\_\_\_\_.

(9) What percentage of the materials required for the total Contract will you have available for this Contract on the Commencement Date? \_\_\_\_\_.

(10) What percentage of the materials required to start this Contract will you have available on the Commencement Date? \_\_\_\_\_.

(11) Do you have the liability insurance and other insurance required by the Contract?

                                            
YES                              NO

If not, can you obtain it by the Commencement Date:

                                            
YES                              NO

(12) Will you be able to meet with HPD's Office of Equal Opportunity, if necessary, on the first available meeting date?

                                            
YES                              NO

(13) Do you have the financial resources to continue working on this Contract while awaiting payment from the City for work performed on this or other contracts?

                                            
YES                              NO

(14) Will you subcontract any portion of the contract work?

                                            
YES                              NO

If so, approximately how much? \_\_\_\_\_

If a portion of the Contract is to be subcontracted, the qualifications of the subcontractor will be considered in determining whether the prime contractor is qualified.

(15) Do you have at the number of years of experience as may be set forth in the Scope of Work in the type and magnitude of work which is required by the Contract? If no years of experience are set forth in the Scope of Work, then do you have at least three (3) years of experience in the type and magnitude of work which is required by the Contract?

                                            
YES                              NO

(16) Do you meet all qualification requirements set forth in the Scope of Work?

                                            
YES                              NO

In determining a bidder's qualifications, HPD reserves the right to ask for additional information from a bidder.

- (17) A bid may be deemed non-responsible and not considered for award of the Contract, if the bidder does not comply with each of the following requirements:
- (a) At present, the bidder must be performing all work on other contracts with the City in a timely manner.
  - (b) The bidder must meet with HPD's Office of Equal Opportunity, if necessary, on the first available meeting date.
  - (c) The bidder or a principal of the bidder must have three years' experience, or such other years of experience as may be set forth in the Scope of Work, in the type and magnitude of Work required by the Contract. (If no years of experience are set forth in the Scope of Work, then the bidder must have at least three (3) years of experience.)
  - (d) The bidder must meet all qualification requirements set forth in the Scope of Work.
- (18) If the bidder misrepresents any of the information required to be provided on this form, then:
- (a) the bid may be deemed non-responsible; and/or
  - (b) it may be deemed a default of the Contract awarded in reliance on this qualification statement; and/or
  - (c) any future bid submitted by the bidder may be deemed non-responsible.

**BIDDER:** \_\_\_\_\_

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

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

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

## **SCHEDULE B – M/WBE UTILIZATION PLAN**

## Part 1: M/WBE Participation Goals

### Contract Overview (To be completed by contracting agency)

APT E-Pin# 80620B0007 (4 Awards) FMS Project ID# \_\_\_\_\_  
 Project Title Installation of Self-Closing Door Hinges Agency PIN# EOD Bid # 8350  
 Contracting Agency HPD Bid/Proposal Response Date \_\_\_\_\_  
 Agency Address 100 Gold Street, Section 6-M City New York State NY ZIP 10038  
 Contact Person Brian C. Saunders Title Director of Contracts, EOD  
 Telephone 212-863-6590 Email contracts@hpd.nyc.gov

Project Description (attach additional pages if necessary)

Remove and replace hinges on doors in occupied residential buildings as directed by HPD, in order to restore proper, self-closing and latching operation. (Goal and plan apply separately to each contract award.)

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

### M/WBE Participation Goals for Services

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

Prime Contract Industry: Construction

#### Category and Breakdown:

Unspecified 25.00 %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals** 25.00 %  
 Line 1

## Part 2: M/WBE Participation Plan

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

### Section 1: Prime Contractor Contact Information

Tax ID# \_\_\_\_\_ FMS Vendor ID# \_\_\_\_\_  
 Business Name \_\_\_\_\_ Contact Person \_\_\_\_\_  
 Business Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Telephone \_\_\_\_\_ Email \_\_\_\_\_

### Section 3: Contractor M/WBE Utilization Plan

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

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

### Section 2: M/WBE Utilization Goal Calculation

#### Prime Contractor Adopting Agency Participation Goals

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

Total Bid/Proposal Value \$ \_\_\_\_\_

**multiplied by** **x**

Total Participation Goals \_\_\_\_\_ %  
 (Line 1 above)

Calculated M/WBE  
 Participation Amount \$ \_\_\_\_\_  
 Line 2

**OR**

#### Prime Contractor With Partial Waiver Approval Adopting Revised Participation Goals

For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Revised M/WBE Participation Goals.

Total Bid/Proposal Value \$ \_\_\_\_\_

**multiplied by** **x**

Total Revised  
 Participation Goals \_\_\_\_\_ %

Calculated M/WBE  
 Participation Amount \$ \_\_\_\_\_  
 Line 3

**Section 4: General Contract Information**

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

\_\_\_\_\_%

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

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

**Section 5: Vendor Certification and Required Affirmations**

I hereby:

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_



# SCHEDULE B – Part 3

## Request for Waiver of M/WBE Participation Requirement

### Contract Overview

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

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

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

### Vendor Contract History

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

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

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

### Reference 1

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

#### Prime Contract description

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

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

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
Percentage of total contract value subcontracted to other vendors	_____ %

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

\_\_\_\_\_ \$ \_\_\_\_\_

### M/WBE Participation Goals for Services

#### Defined by AGENCY in bid/solicitation documents

Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified \_\_\_\_\_ %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals** \_\_\_\_\_ %

#### Proposed by VENDOR seeking waiver

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

Unspecified \_\_\_\_\_ %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals** \_\_\_\_\_ %

Agency/Organization_____	Contract #_____
Reference Contact_____	Telephone_____ Email_____
Contract Start Date_____	Contract End Date_____ Total Contract Value \$_____
Prime Contract description	

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

Agency/Organization_____	Contract #_____
Reference Contact_____	Telephone_____ Email_____
Contract Start Date_____	Contract End Date_____ Total Contract Value \$_____
Prime Contract description	

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

01/2020 Page 4 of 5 For information or assistance, please contact your contracting City Agency

#### Reference 4

Agency/Organization	Contract #
Reference Contact	Telephone
Contract Start Date	Contract End Date
Total Contract Value \$	
Prime Contract description	
Did the vendor perform as a Prime Contractor or as a Subcontractor?	
<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor	
Was the Prime Contract subject to any Goals?	
<input type="checkbox"/> City M/WBE Goals <input type="checkbox"/> State Goals <input type="checkbox"/> Federal Goals <input type="checkbox"/> No Applicable Goals	
Did the Prime Contractor meet Goal requirements?	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain	

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

#### Reference 5

Agency/Organization	Contract #	
Reference Contact	Telephone	
Contract Start Date	Contract End Date	
Total Contract Value \$		
Prime Contract description		
Did the vendor perform as a Prime Contractor or as a Subcontractor?		
<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor		
Was the Prime Contract subject to any Goals?		
<input type="checkbox"/> City M/WBE Goals <input type="checkbox"/> State Goals <input type="checkbox"/> Federal Goals <input type="checkbox"/> No Applicable Goals		
Did the Prime Contractor meet Goal requirements?		
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A		
If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain		
If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.		\$
		\$
		\$
		\$
		\$
		\$
Percentage of total contract value subcontracted to other vendors		%
If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.		
\$		

#### Vendor Certification

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

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

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

**IRAN DIVESTMENT ACT COMPLIANCE  
CERTIFICATION FORM**

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:

*[Please Check One]*

**BIDDER'S CERTIFICATION**

- ☐ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- ☐ I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

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

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

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

THE CITY OF NEW YORK

DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT

INVITATION TO BID

ON FOUR (4) REQUIREMENTS CONTRACTS  
FOR THE INSTALLATION OF SELF-CLOSING DOOR HINGES

IN MANHATTAN (ALL CDS) (AWARD-MN)

AND / OR

IN THE BRONX (ALL CDS) (AWARD-BX)

AND / OR

IN BROOKLYN (CDS 1-6 AND 16) AND QUEENS (ALL CDS) (AWARD-KQ)

AND / OR

IN BROOKLYN (CDS 7-15 AND 17-18) AND STATEN ISLAND (ALL CDS) (AWARD-KS)

E-PIN: 80620B0007

PART 2 OF 2: CONTRACT

**DEPARTMENT OF HOUSING PRESERVATION AND  
DEVELOPMENT**

**CONTRACT DOCUMENTS  
AND SPECIFICATIONS**

## CONTRACT TABLE OF CONTENTS

Article 1	Definitions .....	1
Article 2	Contract Term and Renewal .....	5
Article 3	The Work .....	5
Article 4	Payments.....	6
Article 5	Payment Procedure .....	6
Article 6	Limitations on Payment.....	7
Article 7	Insurance.....	9
Article 8	Indemnification.....	13
Article 9	Tax Exemption.....	14
Article 10	Labor and Materials .....	16
Article 11	Subcontracting.....	17
Article 12	Records and Audit .....	19
Article 13	Reports .....	20
Article 14	Resolution of Disputes .....	21
Article 15	Noise Control Code.....	26
Article 16	Liens .....	26
Article 17	Default .....	26
Article 18	Termination.....	27
Article 19	Independent Contractor .....	30
Article 20	Liquidated Damages .....	31
Article 21	Certain Representations, Warranties, and Covenants of Contractor .....	31
Article 22	Liabilities .....	32
Article 23	Estoppel and Waiver.....	33
Article 24	Notices.....	34
Article 25	Payment and Performance Bond .....	34
Article 26	Payment Guarantee.....	35
Article 27	Contract Changes and Increases .....	38
Article 28	Non-Discrimination In Employment .....	39
Article 29	Minimum and Prevailing Wages.....	42
Article 30	Investigations.....	43
Article 31	Conflict of Interest .....	45

Article 32	Confidentiality and Publications .....	46
Article 33	Inventions, Patents, and Copyrights.....	46
Article 34	Claims and Actions Thereon .....	47
Article 35	Forum: Choice of Law, Consent to Jurisdiction, and Venue .....	48
Article 36	Assignment .....	48
Article 37	Electronic Funds Transfer .....	49
Article 38	Whistleblower Protection Expansion Act .....	50
Article 39	Paid Sick Leave Law.....	51
Article 40	Hiring and Employment Requirements.....	55
Article 41	Participation in an International Boycott .....	57
Article 42	MacBride Principles .....	57
Article 43	Additional Terms and Conditions .....	59
Article 44	Minority-Owned And Women-Owned Business Enterprises Requirements (M/WBE) .....	62
Article 45	Federal Conditions.....	62
Article 46	Iran Divestment Act Compliance Rider.....	62
Rider 1	Iran Divestment Act Compliance Rider	
Rider 2	Whistleblower Protection Expansion Act Poster	
Rider 3	Minority-Owned and Women-Owned Business Enterprises Requirements (M/WBE)	
Exhibit A	Scope of Work Attachment A No Access Procedures	
Exhibit B	Federal Conditions	
Exhibit C	Payment and Performance Bonds	
Exhibit D	Prevailing Wage	
Exhibit E	Certification by Broker or Agent	



**THE CITY OF NEW YORK**  
**DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**  
**CONTRACT FOR THE INSTALLATION OF SELF-CLOSING HINGES**

**THIS CONTRACT** (the "Contract") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between **THE CITY OF NEW YORK**, a municipal corporation formed pursuant to the laws of the State of New York, having its principal office at City Hall, New York, New York 10007 (the "City"), acting by and through its **DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT**, having its principal office at 100 Gold Street, New York, New York 10038 ("HPD"), and \_\_\_\_\_, a \_\_\_\_\_ having its principal office at \_\_\_\_\_, \_\_\_\_\_ ("Contractor").

**WHEREAS**, HPD seeks to obtain the goods and/or services described in the Scope of Work, annexed hereto and made a part hereof as Exhibit A and Contractor wishes to provide such goods and/or services; and

**WHEREAS**, the parties hereto wish to enter into this Contract to establish their respective rights and obligations in connection with the provision of such goods and/or services;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

The following words and expressions, or the pronouns used in their stead, shall have the following respective meanings wherever they appear in this Contract:

**"ACCO"** shall mean the Agency Chief Contracting Officer of HPD.

**"Approved Amount"** shall mean, with respect to any Requisition, the portion of the Requested Amount which HPD determines that Contractor has earned and approves for payment, subject to allowable deductions, pursuant to Article 5 and the other terms of this Contract.

**"Article(s)"** shall mean an Article or Articles of this Contract.

**"Assistant Commissioner"** shall mean the Assistant Commissioner of HPD responsible for administration of this Contract or an authorized representative designated in writing by the Assistant Commissioner.

**"Audit"** shall mean the audit, analysis, investigation, examination, and duplication of Contractor's Books and Records by the City of New York (including HPD), the Comptroller (as defined herein) or any of their authorized representatives. Audits may include, without limitation, the examination and review of the source and application of all income and funds of Contractor, regardless of their source.

**"Audit Term"** shall mean the Term plus an additional period of six years following the later to occur of (A) final payment under this Contract, (B) the expiration or termination

of this Contract, (C) a period otherwise prescribed by law, or (D) if any litigation, claim or audit concerning this Contract has commenced before the expiration of the six-year period, the date such litigation, claim or audit has been completed or resolved.

**“Books and Records”** shall mean Contractor’s financial records and the supporting documentation therefor.

**“Budget”** shall mean the schedule of payment set forth in the Bid Schedule that Contractor submitted with its bid package pursuant to the Invitation for Bids in connection with this Contract.

**“CDRB”** shall mean a Contract Dispute Resolution Board as defined in Section 14.6.

**“Commissioner”** shall mean the Commissioner of HPD or an authorized representative designated in writing by the Commissioner.

**“CCPO”** shall mean the City Chief Procurement Officer of the City of New York.

**“City”** shall have the meaning set forth in the first paragraph of this Contract.

**“City Charter”** shall mean the Charter of the City of New York.

**“City-Owned Property”** shall mean all goods, materials, equipment, and other property at any time furnished to Contractor by the City, including HPD, or acquired by Contractor in whole or in part with funds provided or reimbursed by the City.

**“Commencement Date”** shall mean \_\_\_\_\_.

**“Comptroller”** shall mean the Comptroller of the City of New York.

**“Contractor”** shall have the meaning set forth in the first paragraph of this Contract.

**“Default”** shall mean any of the events described in Section 17.1.

**“Default Costs”** shall mean the total of (A) all costs and expenses (including, without limitation, the cost of soliciting and entering into new contracts) incurred by HPD, directly or indirectly, in connection with the completion of the Work following a Default, and (B) all consequential costs, expenses, and damages incurred by HPD, directly or indirectly, arising from a Default.

**“Default and Termination Notice”** shall mean a Notice sent by HPD to Contractor following the Hearing pursuant to Article 17 stating that Contractor is in Default, describing the nature of such Default, and setting forth the Termination Date.

**“Deputy Commissioner”** shall mean the Deputy Commissioner of HPD responsible for administration of this Contract or an authorized representative designated in writing by the Deputy Commissioner.

**“E.O. 50”** shall mean Executive Order No. 50 (1980), as revised from time to time, and all rules promulgated thereunder.

**“Expiration Date”** shall mean the later of (A) \_\_\_\_\_, or (B) any date to which the Term of this Contract may be extended in accordance with the PPB Rules.

**“FCB”** shall mean the Financial Control Board of the State of New York.

**“FEA”** shall mean the New York State Financial Emergency Act for the City of New York.

**“Federal”** shall mean of or from the Federal Government.

**“Federal Courts”** shall mean collectively the courts of the Federal Government.

**“Federal Government”** shall mean the government of the United States of America.

**“Final Requisition Date”** shall mean the date designated by HPD, in accordance with Paragraph 5.1(D), as the last date for submission of Requisitions by Contractor.

**“Force Majeure Delay”** shall mean a delay in the performance of the obligations of Contractor pursuant to this Contract which is beyond the control of, and without the fault or negligence of, Contractor and which is caused by (A) acts, laws, rules, regulations, or orders of a governmental authority, (B) acts of God or of a public enemy, or (C) fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, material shortage, or weather of unusual severity.

**“General Municipal Law”** shall mean the General Municipal Law of the State of New York.

**“Hearing”** shall mean the opportunity to be heard pursuant to Section 17.2.

**“Information”** shall mean all of the reports, documentation, information, or data furnished to or obtained by Contractor, or gathered, prepared, assembled, or used by Contractor, in connection with this Contract.

**“Labor Law”** shall mean the Labor Law of the State of New York.

**“MacBride Principles”** shall mean those principles relating to nondiscrimination in employment and freedom of workplace opportunity which require employers doing business in Northern Ireland as further defined in Article 38 hereof.

**“Notices”** shall mean collectively all notices, approvals, requests, waivers, consents, or other communications given or required to be given pursuant to this Contract.

**“Notice of Dispute”** shall have the meaning given in Section 14.4.

**“OATH”** shall mean the Office of Administrative Trials and Hearings of the City of New York.

**“Payable Amount”** shall mean, with respect to any Requisition, the Approved Amount minus any other amounts which may be withheld by HPD and the City pursuant to the terms of this Contract.

**“PPB”** shall mean the Procurement Policy Board of the City of New York.

**“PPB Rules”** shall mean Title 9 of the Rules of the City of New York, as amended from time to time.

**“Pre-Termination Work”** shall mean all Work satisfactorily completed by Contractor prior to the Termination Date.

**“Requested Amount”** shall mean, with respect to any Requisition, the amount of payment requested by Contractor in such Requisition.

**“Requisition”** shall mean a written request from Contractor to HPD for payment for Work, which written request shall include, but shall not be limited to, (A) a written statement of the Work rendered by Contractor for which payment is requested and the amounts of payment requested, identified by Budget category, and such other information as HPD may require, all in such form as HPD may establish or require, and (B) such supporting documentation as may be required by HPD.

**“SBS”** shall mean the Department of Small Business Services of the City of New York.

**“SBS Orders”** shall mean orders of the Commissioner of SBS.

**“Scope of Work”** shall mean the description of the goods to be supplied and/or the work to be performed by Contractor pursuant to this Contract set forth in Exhibit A.

**“Section(s)”** shall mean a Section or Sections of this Contract.

**“Site(s)”** shall mean the area(s) where Work is to be performed under a Work Order issued by HPD.

**“State”** shall mean the State of New York.

**“State Courts”** shall mean collectively the courts of the State.

**“Subcontract”** shall mean an agreement between Contractor and a Subcontractor for goods and/or services to be provided in connection with the performance of the Work.

**“Subcontractor”** shall mean any person or entity, other than an employee of Contractor, which contracts with Contractor to furnish, or actually furnishes, goods and/or services in connection with the performance of the Work.

**“Term”** shall mean the term for the performance of the Work under this Contract.

**“Termination Date”** shall mean the effective date of any termination of this Contract pursuant to Article 18.

**“Termination Notice”** shall mean a notice sent by HPD to Contractor which terminates this Contract pursuant to Article 18.

**“Total Contract Price”** shall mean \$875,000.00.

**“Work”** shall mean all or a portion of the goods and/or services required to be furnished by Contractor under this Contract, as more fully described in the Scope of **Work**.

**“Work Order”** shall mean the written direction by HPD to the Contractor to perform Work at a designated Site.

Unless otherwise indicated, all capitalized terms in this Contract not defined in this Article shall have the meanings ascribed to them in the IFB.

**ARTICLE 2**  
**CONTRACT TERM AND RENEWAL**

- 2.1 Contract Term. The term of this Contract shall be for Three (3) years beginning on the Commencement Date and ending on the Expiration Date (the "Term"), unless terminated earlier in accordance with the terms herein.
- 2.2 Renewal. HPD, shall have the right, in its sole discretion, to renew this Contract for an additional term of One (1) Year (the "Renewal Term") at the same price and under the same terms and conditions enumerated herein.

**ARTICLE 3**  
**THE WORK**

- 3.1 Compliance. During the Term, Contractor shall perform the Work in accordance with the terms and subject to the conditions set forth herein.
- 3.2 HPD Records. Where performance of this Contract involves use by Contractor of HPD's papers, files, data or records at HPD's facilities or offices, Contractor shall not remove any such papers, files, data or records without the prior approval of HPD's designated official.
- 3.3 Ownership. All of the Work performed under this Contract shall be the sole and exclusive property of the City.
- 3.4 Inspection. HPD may observe the performance of the Work at any location where the Work is being performed. All Work, materials (whether incorporated into the Work or not), and methods shall at all times be subject to the inspection of HPD. If HPD does not approve any Work, material, or method, such Work, material, or method shall be immediately changed, corrected, replaced, and made good without additional cost or expense to HPD. HPD shall be the final judge of the quality and suitability of the Work, materials, and methods. Acceptance of any Work, material, or method shall not relieve Contractor from any of its obligations under this Contract.
- 3.5 Completion. Contractor shall notify HPD in writing when Contractor believes that the Work of a Work Order is complete. If HPD determines that the Work is incomplete, Contractor shall complete the Work. HPD shall have no liability or obligation as a result of the inspection and Contractor shall not be relieved of any obligations under this Contract as a result of the performance of such inspection or any acceptance thereof. The Work of a Work Order shall be deemed to be complete when HPD issues final payment for Work covered by such Work Order, including the release of any amounts withheld under Section 5.2 hereinbelow.
- 3.6 Approval. The Work to be performed by Contractor shall at all times be subject to the approval of HPD. HPD shall, in all cases, determine the amount, quality, acceptability, and fitness of the Work. The decision of HPD shall be final, conclusive, and binding upon Contractor.

- 3.7 Safety. Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from damage, loss or injury resulting from Contractor's, and/or its Subcontractors' operations under this Contract. Contractor's obligation to protect shall include the duty to provide, place or replace, and adequately maintain at or about any Site suitable and sufficient protection such as lights, barricades, and enclosures.
- 3.8 Extensions of Time to Perform. Upon written application by Contractor, the ACCO may grant an extension of time for performance of the Work under a Work Order. Said application must state, at a minimum, in detail, each cause for delay, the date the cause of the alleged delay occurred, and the total time of delay in days attributable to such cause. The ruling of the ACCO shall be binding as to the allowance of an extension for that Work Order and the number of days allowed.

#### **ARTICLE 4**

#### **PAYMENTS**

- 4.1 Budget. Subject to all other terms of this Contract, the City shall pay and Contractor shall accept, as compensation in full for all Work rendered hereunder, the amounts set forth in the Budget.
- 4.2 Total Contract Price. The aggregate total payment to Contractor pursuant to this Contract shall not exceed the Total Contract Price.
- 4.3 Registration. The funds registered for this Contract in each fiscal year shall depend upon the performance of Contractor and the availability of funds. The sum of all funds registered for this Contract may be less than the Total Contract Price.

#### **ARTICLE 5**

#### **PAYMENT PROCEDURE**

- 5.1 Requisitions.
- A. Form. HPD shall establish, and shall communicate to Contractor, requirements regarding the form and content of Requisitions and the financial and other records to be maintained by Contractor. Contractor shall prepare all Requisitions in accordance with the itemized bid prices as per Bid Schedule and the approved Work Order as applicable.
- B. Submission. Contractor shall submit a Requisition, along with all attachments thereto, to HPD's Contract Compliance Accounts Payable (CCAP) Unit with an original signature no later than thirty (30) days after completion of the Work under any Work Order (the "Requisition Period"). Requisitions must include copies of all permits and other required documents.

- C. Review. HPD shall review each Requisition submitted by Contractor and shall determine the Approved Amount, and Payable Amount with respect thereto. If HPD disapproves part or all of the Requested Amount with respect to any Requisition, HPD shall communicate such disapproval and the reasons therefor to Contractor.
  - D. Final Requisition Date. HPD shall designate the Final Requisition Date, which date shall be not less than thirty (30) days after the end of the Term, by written Notice to Contractor. If Contractor fails to submit its Final Requisition by the Final Requisition Date, Contractor waives and relinquishes all rights that Contractor may at any time have for payments otherwise due to Contractor hereunder, whether or not for services performed.
- 5.2 Deductions / Amounts Withheld. Notwithstanding any other provision of this Contract, in addition or as an alternative to any other remedies under this Contract, HPD may, in its sole discretion, withhold any part or all of the payments otherwise payable to Contractor under this Contract until: (A) Contractor fully performs all obligations of Contractor under this Contract through the latest date covered by any Requisition; (B) Contractor delivers to HPD all reports and documents required to be submitted by Contractor to HPD through the latest date covered by any Requisition; and (C) HPD has completed a final Audit of each Requisition and Contractor's Books and Records upon which each such Requisition is based.
- 5.3 Payment.
- A. Payment. The City shall pay to Contractor, with respect to each Requisition, the Payable Amount minus any amounts withheld pursuant to Section 5.2 or any other provision of this Contract.
  - B. Prompt Payment. Payments pursuant to any Requisition which Contractor submits in proper form shall be subject to the prompt payment provisions of the PPB Rules. Any determinations of interest due shall be made in accordance with the provisions of the PPB Rules and Section 3-a of the General Municipal Law .
  - C. No Release. The City shall not be deemed, by virtue of making payments to Contractor, to have released Contractor from any claim or liability, or to have waived any cause of action, arising from any breach of this Contract.

## **ARTICLE 6**

### **LIMITATIONS ON PAYMENT**

- 6.1 Earliest Payment Date. Notwithstanding any provision of this Contract to the contrary, no payments shall be made to Contractor under this Contract until the later to occur of (A) the Commencement Date or (B) the date on which this Contract is registered under City Charter section 328.

- 6.2 Source of Funds. Subject to the provisions of Article 18, the City shall pay all amounts owed to Contractor hereunder only from an allocation of funds to the Program, and the obligation of the City, including HPD, to make payments hereunder shall be subject to the availability of such funds. The obligation of the City to make payments under this Contract shall be subject to the eligibility of the activities comprising the Work for such funding and the availability of such funds for the Work. The City shall not be liable under this Contract beyond the amount of moneys available and specifically appropriated for this Contract.
- 6.3 No Payment for Unauthorized Work. HPD shall not pay Contractor for any Work which is not performed pursuant to and in accordance with all terms of this Contract.
- 6.4 Payment for Work Funded Through Other Sources.
- A. HPD shall not pay Contractor for the performance of Work that is paid for by other sources of funding, including, but not limited to, other City contracts.
  - B. If, at any time Contractor receives, or has knowledge that it shall receive, funding or income from any source or sources (including the City, the State, the Federal Government, and/or any other public or private sources) in addition to the funds to be received by Contractor under this Contract and Contractor intends to apply or applies any part of such additional funding or income to Work, related overhead or any building designated under this Contract, then Contractor shall promptly deliver to HPD a written Notice specifying in detail (i) the amount of such additional funding or income received and/or to be received, (ii) the identity of the source of such additional funding; and (iii) the amounts to be applied for each item.
  - C. If any such sources of additional funding or income relate or are to be applied to the Work performed or to be performed during the Term, Contractor shall deliver to HPD a written Notice describing any change in the source, amount, or disbursement of income and funds within ten (10) days after learning of each such change.
  - D. If Contractor receives any funds from any source other than HPD for the payment of costs incurred in connection with the performance of the Work, then, at HPD's option: Contractor shall pay to HPD, upon demand, an amount equal to such payment; or HPD shall deduct such amount from the payments to be made to Contractor under this Contract; or the City may elect to set off against payments otherwise due to Contractor by the City, whether under this Contract or otherwise.
  - E. The obligations of Contractor under Paragraphs 6.4(B), (C) and (D) above shall survive the expiration or earlier termination of this Contract.
- 6.5 Overpayments and Underpayments. All payments made and to be made under this Contract may be reduced by the amounts of prior overpayment or increased for prior underpayment made against other Requisitions.



- 6.6 Payments Subject to Audit. All payments made and to be made under this Contract are subject to Audit.

## **ARTICLE 7** **INSURANCE**

- 7.1 During performance of the Work and at any time prior to the Expiration Date or Termination Date, Contractor will maintain the types of insurance (the "Required Insurance") set forth below:

- A. Commercial General Liability Insurance. Contractor shall maintain Commercial General Liability ("CGL") Insurance in the amount of \$1,000,000 per occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 aggregate (on a "per project" basis that applies to all operations under this Contract), and \$2,000,000 products/completed operations covering the operations under this Contract. Coverage under this insurance shall be at least as broad as that provided by the latest edition of Insurance Services Office ("ISO") Form CG 00 01. Such insurance shall be "occurrence" based rather than "claims-made." No Commercial Liability Insurance policy shall contain exclusions that are not included in ISO Form CG 00 01 (whether by exception, exclusion, endorsement, script, or other modification) unless approved in writing by HPD, including but not limited to exclusions of any of the following attributes: (i) contractual liability insuring the contractual obligations of the insured; (ii) employer's liability coverage for liability assumed by the Contractor under an "insured contract"; (iii) coverage for claims arising under New York Labor Law; (iv) independent contractors; (v) explosion, collapse and underground (XCU); and (vi) the applicability of CGL Insurance coverage to the City, including its officials and employees, as Additional Insured in respect of liability arising out of claims against the Additional Insured by employees of Contractor.
- I. Such CGL Insurance shall include the City, including its officials and employees, as an Additional Insured. Coverage must be at least as broad as the latest edition of ISO Forms CG 20 10, CG 20 26, and CG 20 37. Completed operations coverage for the City must be maintained for at least one year following the completion of the last Work Order under this Contract.
- II. Such CGL Insurance shall name all other entities designated as additional insureds as may be indicated in this Contract but only for claims arising from Contractor's operations under this Contract, with coverage at least as broad as the latest edition of ISO Form CG 20 26.
- III. If the Work requires a permit from the Department of Buildings pursuant to 1 RCNY Section 101-08, Contractor shall provide CGL Insurance with limits of at least those required by 1 RCNY Section 101-08 or greater limits required by HPD in this Contract. If the Work does not require such a permit, the minimum limits shall be those provided for in this Contract.

- B. Workers' Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance. Contractor shall provide, and shall cause its Subcontractors to provide, Workers Compensation Insurance, Employers' Liability Insurance, and Disability Benefits Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.
- C. Commercial Automobile Liability Insurance. Contractor shall provide Commercial Automobile Liability Insurance in the amount of \$1,000,000 per accident for liability arising out of ownership, maintenance or use of any owned (if any), non-owned and hired vehicles to be used in connection with this Contract. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the Commercial Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

7.2 General Requirements for Insurance Coverage and Policies.

- A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-/VII or a Standard & Poor's rating of at least A, a Moody's Investors Service Rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistic rating organization acceptable to the City Corporation Counsel unless prior written approval is obtained from the City Corporation Counsel.
- B. 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 City is an insured under the policy.
- C. The City's limits of coverage for all types of insurance required pursuant to this Contract shall be the greater of (A) the minimum limits set forth in this Contract or (B) the limits provided to Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.
- D. Contractor may satisfy its insurance obligations under this Contract through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- E. Policies of liability insurance provided pursuant to this Contract shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

7.3 Proof of Insurance.

- A. For all types of insurance required by Section 7.1, Contractor shall file proof of insurance in accordance with this Section within ten (10) days of award.
- B. For Workers' Compensation Insurance provided pursuant to Paragraph 7.1(B) of this Contract, Contractor shall submit one of the following forms: C-105.2 - Certificate of Workers' Compensation Insurance; U-26.3 - State Insurance Fund

Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. For Disability Benefits Insurance provided pursuant to Paragraph 7.1(B), Contractor shall submit DB-120.1 - Certificate Of Insurance Coverage Under The NYS Disability Benefits Law, Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the Commissioner. ACORD forms are not acceptable.

- C. For policies provided pursuant to all of Section 7.1 other than Paragraph (B) thereof, Contractor shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall certify
  - I. the issuance and effectiveness of such policies of insurance, each with the specified minimum limits;
  - II. for insurance secured pursuant to Paragraph 7.1(A) that the City, including its officials and employees, and any other entity specified in this Contract is an Additional Insured;
  - III. 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 either a duly executed "Certification by Broker or Agent" in the form contained in Exhibit E which is attached to this Contract and made a part hereof or copies of all policies referenced in such Certificate of Insurance as certified by an authorized representative of the issuing insurance carrier and the additional insured endorsement for CGL Insurance.

- D. Documentation confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Contract. Such proofs of insurance shall comply with the requirements of Paragraphs 7.3(B) and 7.3(C) above.
- E. Contractor shall be obligated to provide the City with a copy of any policy of insurance provided pursuant to this Article upon the demand for such policy by the Commissioner or the City Corporation Counsel.

#### 7.4 Operations of Contractor.

- A. Contractor shall not commence the Work unless and until all required certificates have been submitted to and accepted by the Commissioner. Acceptance by the Commissioner of a certificate does not excuse Contractor from securing insurance consistent with all provisions of this Article or of any liability arising from its failure to do so.

- B. Contractor shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this Contract and shall be authorized to perform Work only during the effective period of all required coverage.
- C. In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, Contractor shall immediately stop all Work, and shall not recommence Work until authorized in writing to do so by the Commissioner. The Commissioner may also declare Contractor in default for failure to maintain required insurance.
- D. In the event Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall be cancelled or terminated (or has been cancelled or terminated) for any reason, 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, Contractor shall ensure that there is no interruption in any of the insurance coverage required under this Article.
- E. Where notice of loss, damage, occurrence, accident, claim or suit is required under an insurance policy maintained in accordance with this Article, Contractor shall promptly notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Contract (including notice to CGL insurance carriers for events relating to Contractor's own employees) in the time required by the applicable policies. 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 and employees, 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. 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.
- F. 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, Contractor shall at all times fully cooperate with the City with regard to such potential or actual claim.

7.5 Subcontractor Insurance. In the event Contractor requires any Subcontractor to procure insurance with regard to any operations under this Contract and requires such Subcontractor to name Contractor as an Additional Insured thereunder, Contractor shall ensure that the Subcontractor name the City, including its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 20 26. Such coverage must be provided without a requirement for privity of contract.

- 7.6 Wherever reference is made in this Article to documents to be sent to the Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Article 24 of this Contract.
- 7.7 Apart from damages or losses covered by Disability Benefits Insurance, Contractor waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Contractor and/or its employees, agents, or Subcontractors.
- 7.8 In the event Contractor utilizes a self-insurance program (including a self-insured retention) to satisfy any of the requirements of this Article, Contractor shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies. Contractor must disclose any self-insured retentions on its CGL insurance or commercial automobile liability insurance and obtain written approval from the Commissioner.
- 7.9 Materiality/Non-Waiver. Contractor's failure to secure policies in complete conformity with this Article, or to give an insurance company timely notice of any sort required in this Contract or to do anything else required by this Article shall constitute a material breach of this Contract. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.
- 7.10 Pursuant to General Municipal Law Section 108, this Contract shall be void and of no effect unless Contractor maintains Workers' Compensation Insurance for the term of this Contract to the extent required and in compliance with the New York State Workers' Compensation Law.
- 7.11 Other Remedies. Insurance coverage provided pursuant to this Article or otherwise shall not relieve Contractor of any liability under this Contract, nor shall it preclude the City from exercising any rights or taking such other actions available to it under any other provisions of this Contract or law.

## **ARTICLE 8**

### **INDEMNIFICATION**

- 8.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold the City, its employees, and officials (the "Indemnitees") harmless against any and all claims (including but not limited to claims asserted by any employee of Contractor and/or its Subcontractors) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of Contractor and/or its Subcontractors in the performance of this Contract or from Contractor's and/or its Subcontractors' failure to comply with any of the provisions of this

Contract or of any applicable laws, rules, and/or regulations. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Section by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that the indemnification obligation hereunder contemplates (A) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of any applicable laws, rules, and/or regulations, or otherwise; and (B) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of any applicable laws, rules, and or regulations, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

- 8.2 Indemnification under Section 8.1 or any other provision of the Contract shall operate whether or not Contractor or its Subcontractors have placed and maintained the insurance specified under Article 7 of this Contract.
- 8.3 Set-Off. At its option, HPD may deduct the actual and reasonable amount of any claims for which it is indemnified by Contractor pursuant to this Article on a dollar for dollar basis from the outstanding balance due and owing Contractor for the purpose of set-off in an amount sufficient to cover the cost incurred by the City for such claims. Contractor shall also be liable to and shall pay the City upon the City's demand any and all consequential damages attributable to any such claims including but not limited to, reasonable attorney fees incurred by the City. The rights and remedies of the City provided for in this Article shall not be exclusive and are in addition to any other rights and remedies provided at law or in equity.

## **ARTICLE 9**

### **TAX EXEMPTION**

- 9.1 The City is exempt from payment of Federal, State, and local taxes, including, without limitation, Sales and Compensating Use Taxes of the State of New York and its cities and counties on all tangible personal property sold to the City pursuant to the provisions of this Contract. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to Contractor or a Subcontractor, if any, or to tangible personal property which, even though it is consumed, is not incorporated into the completed Work (consumable supplies) and tangible personal property that the Contractor and/or its Subcontractors, if any, are required to remove from the Site during or upon completion of the Work (removable property). The Contractor and its Subcontractors, if any, shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such consumable supplies and removable property.

- 9.2 The Contractor agrees to sell and the City agrees to purchase all tangible personal property, other than consumable supplies and other removable property, that is required, necessary or proper for or incidental to the construction of the Project covered by this Contract. The sum paid under this Contract for such tangible personal property shall be in full payment and consideration for the sale of such tangible personal property.
- A. The Contractor agrees to construct the Project and to perform all Work, labor and services rendered, necessary, proper or incidental thereto for the sum shown in the bid for the performance of such Work, labor, and services, and the sum so paid pursuant to this Contract for such Work, labor, and services, shall be in full consideration for the performance by the Contractor of all its duties and obligations under this Contract in connection with said Work, labor, and services.
- 9.3 20 NYCRR Section 541.3(d) provides that a Contractor's purchases of tangible personal property that is either incorporated into real property owned by a governmental entity or purchased for and sold to a governmental entity are exempt from Sales and Use Tax. The City shall not pay Sales Tax for any such tangible personal property that it purchases from the Contractor pursuant to the Contract. With respect to such tangible personal property, the Contractor, at the request of the City, shall furnish to the City such bills of sale and other instruments as may be required by the City, properly executed, acknowledged and delivered assuring to the City title to such tangible personal property, free of liens and/or encumbrances, and the Contractor shall mark or otherwise identify all such tangible personal property as the property of the City.
- 9.4 Title to all tangible personal property to be sold by the Contractor to the City pursuant to the provisions of the Contract shall immediately vest in and become the sole property of the City upon delivery of such tangible personal property to the Site. Notwithstanding such transfer of title, the Contractor shall have the full and continuing responsibility to install such tangible personal property in accordance with the provisions of this Contract, protect it, maintain it in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional tangible personal property in place of any that may be lost, stolen or rendered unusable, without cost to the City, until such time as the Work covered by the Contract is fully accepted by the City. Such transfer of title shall in no way affect any of the Contractor's obligations hereunder. In the event that, after title has passed to the City, any of the tangible personal property is rejected as being defective or otherwise unsatisfactory, title to all such tangible personal property shall be deemed to have been transferred back to the Contractor.
- 9.5 The purchase by Subcontractors, if any, of tangible personal property to be sold hereunder shall be a purchase or procurement for resale to the Contractor (either directly or through other Subcontractors) and therefore not subject to the aforesaid sales and compensating use taxes, provided that the subcontracts and purchase agreements provide for the resale of such tangible personal property and that such subcontracts and purchase agreements are in a form similar to this Contract with respect to the separation

of the sale of consumable supplies and removable property from the Work and labor, services, and any other matters to be provided, and provided further that the subcontracts and purchase agreements provide separate prices for tangible personal property and all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for tangible personal property from the payments for other Work and labor and other things to be provided.

- 9.6 The Contractor and its Subcontractors, if any, shall furnish a Contractor Exempt Purchase Certificate to all persons, firms or corporations from which they purchase tangible personal property for the performance of the Work covered by this Contract.
- 9.7 In the event any of the provisions of this Article shall be deemed to be in conflict with any other provisions of this Contract or create any ambiguity, then the provisions of this Article shall control.

## **ARTICLE 10**

### **LABOR AND MATERIALS**

- 10.1 Competence. Contractor shall employ or otherwise engage only experienced, qualified and competent persons to perform the Work. Whenever HPD shall inform Contractor, in writing, that any employee is, in its opinion, incompetent, unfaithful, or disobedient, Contractor shall discharge such employee, or cause such employee to be discharged, from the performance of the Work forthwith and shall not again cause or permit such employee to be employed in the performance of the Work.
- 10.2 No City Employees. Contractor shall not, without the prior written approval of HPD, employ or otherwise engage any person who is an employee of the City to perform any Work.
- 10.3 Adequate Staff. Contractor shall at all times (A) employ or otherwise engage a sufficient number of persons to perform the Work and to comply with all obligations of Contractor, and (B) cause such persons to devote to the performance of the Work a number of hours which is sufficient to complete the Work in the quantity and quality, and within the time, required hereunder. HPD, in its sole discretion, may at any time require Contractor to hire additional staff to perform Work or to replace existing staff members engaged in the performance of Work.
- 10.4 Supervision. Contractor shall be solely responsible for the supervision, compensation, work, and personal conduct of all employees of Contractor while engaged under this Contract. Nothing herein shall impose any liability or duty upon the City for (A) the acts, omissions, liabilities, or obligations of Contractor or of any person, firm, company, agency, association, corporation or organization employed or engaged by Contractor as independent contractor, consultant, expert, specialist, trainee, employee, servant, or agent, or (B) taxes of any nature, including but not limited to unemployment insurance, workers' compensation, disability insurance, Social Security coverage and employee retirement membership or credit.



- 10.5 Labor and Materials. Contractor shall not employ or utilize on the Work any labor, materials, means or employee whose employment, or utilization during the course of this Contract, may tend to cause or results in strikes, work stoppages, delays, suspension of Work or similar issues by workmen employed by Contractor or the Subcontractors, or by any of the trades working in or about the buildings and premises where Work is being performed under this Contract or by other contractors or their subcontractors pursuant to other contracts, or on any other buildings or premises owned or operated by the City, its agencies, departments, boards or authorities. Any violation by Contractor of this requirement may, upon certification of HPD, be considered as proper and sufficient cause for declaring Contractor to be in Default, and for the City to take such action as HPD may deem proper.
- 10.6 Parts and Equipment. If the Work involves the purchase and/or installation of parts, equipment, and/or other products, Contractor warrants that (A) such parts, equipment, and/or other products are standard new current model of regular stock with all components regularly used with the type of equipment serviced, and (B) no part or attachment has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

## **ARTICLE 11**

### **SUBCONTRACTING**

- 11.1 Subcontracting:
- A. Contractor shall not enter into any Subcontract or otherwise engage any Subcontractor to perform any Work or any other obligations of Contractor hereunder without the prior written approval of HPD.
  - B. Any Subcontracts made by Contractor shall be in writing; no Work may be performed by a Subcontractor prior to Contractor entering into a written subcontract with the Subcontractor and complying with the provisions of this Article.
  - C. Contractor shall, upon request, promptly deliver to HPD a true, accurate, and complete copy of each proposed or approved Subcontract.
  - D. Approval of any Subcontract by HPD shall not relieve Contractor any of the responsibilities, duties, and liabilities of Contractor hereunder. Contractor shall remain fully responsible for all responsibilities, duties, and liabilities of Contractor hereunder and Contractor shall be as fully responsible to HPD and the City for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them as Contractor is for the acts and omissions of persons directly employed by Contractor.
  - E. Nothing herein shall create any contractual relationship between any Subcontractor and HPD.

11.2 Subcontractor Reporting System:

- A. Before making any subcontracts, Contractor shall submit a written statement to the Commissioner giving the name and address of the proposed Subcontractor; the portion of the Work and materials which it is to perform and furnish; the cost of the subcontract; the proposed subcontract if requested by the Commissioner; and any other information tending to prove that the proposed Subcontractor has the necessary facilities, skill, integrity, past experience, and financial resources to perform the Work in accordance with the terms and conditions of this Contract.
- B. In addition, Contractor is required to list the Subcontractor in the web based Subcontractor Reporting System through the City's Payee Information Portal (PIP), available at [www.nyc.gov/pip](http://www.nyc.gov/pip).<sup>1</sup> For each Subcontractor listed, Contractor is required to provide the following information: maximum contract value, description of Subcontractor's 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.
- C. Failure of Contractor to list a Subcontractor and/or to report Subcontractor payments in a timely fashion may result in the Commissioner declaring Contractor in default of the Contract and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that Contractor fails to identify a Subcontractor along with the required information about the Subcontractor and/or fails to report payments to a Subcontractor, beyond the time frames set forth herein or in the notice from the City. Article 15 shall govern the issue of liquidated damages.

11.3 Subcontracts. Contractor shall cause each Subcontract to provide that

- A. the Subcontractor shall comply with, and perform all work in accordance with, all applicable provisions of this Contract,
- B. nothing therein shall impair the rights of HPD,
- C. nothing contained therein or herein shall create any contractual relationship between the Subcontractor and HPD,
- D. the Subcontractor is not a third party beneficiary of this Contract, and
- E. the Subcontractor shall be bound by any confidentiality provisions of this Contract.

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<sup>1</sup> 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 [www.nyc.gov/pip](http://www.nyc.gov/pip). Additional assistance with PIP may be obtained by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

- 11.4 Insurance. Contractor shall not cause or permit any Subcontractor to perform any Work until such Subcontractor has furnished satisfactory evidence of insurance coverage in the same amounts and to the same extent as is required to be maintained by Contractor for performance of such Work.
- 11.5 Payment.
- A. Contractor shall pay all Subcontractors for and on account of Work performed by such Subcontractors in accordance with the terms of their respective Subcontracts. If and when required by HPD, Contractor shall submit satisfactory evidence that Contractor has made such payment.
  - B. Notwithstanding any provision of this Contract to the contrary, HPD may directly pay to any Subcontractor any amounts that HPD, in its sole discretion, determines are due and owing to such Subcontractor in accordance with the terms of the applicable Subcontract.
  - C. Contractor shall not make, cause or permit any payment to any Subcontractor unless the invoice submitted by such Subcontractor includes a written certification that the employees performing the work described in such invoice have been paid the wages required by any applicable laws.
  - D. The Comptroller may, upon recommendation by HPD, deduct from the amounts certified under this Contract to be due to Contractor, the sum or sums due and owing from Contractor to any Subcontractors according to the terms of any Subcontracts. In case of dispute between Contractor and any Subcontractors as to the amount due and owing, the Comptroller may deduct and withhold from the amounts certified under this Contract to be due to Contractor such sum or sums as may be claimed by any Subcontractor in a sworn affidavit to be due and owing, until such time as all claims shall have been finally resolved.
- 11.6 Warranties and Guaranties. Contractor shall obtain from each Subcontractor and deliver to HPD all manufacturer's warranties and guaranties required hereunder, or as otherwise requested by HPD, relating to equipment, appliances, and fixtures procured and installed in connection with the performance of the Work. All such warranties and guaranties shall be in the name of the City.

## **ARTICLE 12**

### **RECORDS AND AUDIT**

- 12.1 Maintenance of Books and Records. During the Audit Term, Contractor shall maintain the following Books and Records in such form as HPD may require:
- A. separate, true, accurate, and complete books of account, together with payment Requisitions and supporting documentation (including without limitation, vouchers, invoices, receipts, canceled checks, and other documents relating to the business and financial affairs of Contractor), and other records and reports showing in detail all receipts and all expenses and charges incurred in the performance of the Work under this Contract.

- B. payrolls for all employees of Contractor whose salaries are funded in whole or in part with funds received by Contractor under this Contract and records relating thereto, setting forth the name and address of each employee and his or her correct job classification, rate of pay (including rates of contribution for or costs assumed to provide fringe benefits), daily or weekly number of hours worked, nature of work performed, deductions made, actual wages paid, together with such other information as may be requested by HPD.

- 12.2 Access to Books and Records. During the Audit Term, Contractor shall maintain its Books and Records at the offices of Contractor located at Contractor's address first set forth above, or at such other location as may be approved by HPD in writing. Contractor shall make such Books and Records available for inspection and Audit in accordance with the following Section 12.3. The City, including HPD, shall have the right at all times to inspect the operations and records of Contractor relating to the subject matter covered by this Contract.
- 12.3 Right to Audit. During the Audit Term, the City (including HPD), the Comptroller, and any of their duly authorized representatives shall have access to Contractor's Books and Records during normal working hours for the purpose of performing Audits. Contractor shall promptly cooperate in good faith with the City (including HPD), the Comptroller, and any of their duly authorized representatives so that all Audits can be timely completed.
- 12.4 Fiscal and Accounting Requirements. Contractor shall adhere to any fiscal and accounting requirements established by HPD for all moneys received or disbursed by Contractor in connection with this Contract, including, without limitation, submitting to HPD upon request, in such form as HPD may require, a report setting forth information with regard to the internal control procedures established by Contractor for handling funds received by Contractor under this Contract.

### **ARTICLE 13**

#### **REPORTS**

- 13.1 General. Contractor shall submit to HPD, within the time and in the manner specified by HPD, all reports and documents required under this Contract, including, but not limited to, any reports and documents specified in this Article.
- 13.2 Status Reports. At the request of HPD, and upon a regular schedule to be determined by HPD, Contractor shall submit to HPD written status reports setting forth, in such detail as HPD may require, (A) a description of and the results of the Work performed by Contractor in connection with this Contract during the preceding month and cumulatively during the Term, and (B) such other issues and information as HPD shall require.
- 13.3 Payroll Reports. Contractor shall, and shall cause each Subcontractor to, furnish to HPD upon demand a verified copy of its payroll records, time records, and any other information required by HPD to satisfy HPD to verify compliance with any and all applicable statutes or regulations.

**ARTICLE 14**  
**RESOLUTION OF DISPUTES**

- 14.1 Except as provided in Paragraphs 14.1(A) and 14.1(B) below, all disputes between the City and Contractor that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this Article and Section 4-09 of the PPB Rules. This procedure shall be the exclusive means of resolving any such disputes.
- A. This Article 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 the State of New York) relating to proprietary rights in computer software.
- B. For construction and construction-related services this Article shall apply only to disputes about the scope of work delineated by this Contract, the interpretation of Contract Documents, the amount to be paid for extra Work or disputed Work performed in connection with this Contract, the conformity of Contractor's Work to this Contract, and the acceptability and quality of Contractor's Work; such disputes arise when the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner makes a determination with which Contractor disagrees.
- 14.2 All determinations required by this Article shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this Article shall be deemed a non-determination without prejudice that will allow application to the next level.
- 14.3 During such time as any dispute is being presented, heard, and considered pursuant to this Article, the terms of this Contract shall remain in full force and effect and Contractor shall continue to perform work in accordance with this Contract and as directed by the ACCO or Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. Failure of Contractor to continue the Work as directed shall constitute a waiver by Contractor of any and all claims being presented pursuant to this Article and a material breach of Contract.
- 14.4 Presentation of Dispute to Agency Head.
- A. Notice of Dispute and Agency Response. Contractor shall present its dispute in writing (the "Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within thirty (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 this Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by Contractor in the dispute was arrived at. Within thirty (30) days after

receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 the State of New York. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Willful failure of Contractor to produce any requested material whose relevancy Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by 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 Contractor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 vendor with a contract related to the Work of this Contract and that vendor shall be bound by the decision of the Agency Head. Any vendor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the contractor initiating the dispute.
- C. Agency Head Determination. Within thirty (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 Contractor and the ACCO and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner, 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 (the "CDRB") pursuant to this Article. The City may not take a petition to the CDRB. However, should Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to Contractor and more favorable to the City than the decision of the Agency Head.

14.5 Presentation of Dispute to the Comptroller. Before any dispute may be brought by Contractor to the CDRB, 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 thirty (30) days of receipt of a decision by the Agency Head, 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 (A) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) Contractor contends the dispute was wrongly decided by the Agency Head; (B) a copy of the decision of the Agency Head, and (C) a copy of all materials submitted by Contractor to the agency, including the Notice of Dispute. 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 thirty (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 Sections 7-201 and 7-203 of the Administrative Code. 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 Contractor. Willful failure of Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, Agency representatives, and any other personnel desired by the Comptroller.
- D. Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in Paragraph 14.5(C) above to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all the materials. 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 contract between the parties.

14.6 Contract Dispute Resolution Board. There shall be a CDRB composed of:

- A. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such

orders consistent with this Section 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/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/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.

14.7 Petition to CDRB. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this Section, Contractor, within thirty (30) days thereafter, may petition the CDRB to review the Agency Head determination.

- A. Form and Content of Petition by Contractor. Contractor shall present its dispute to the CDRB in the form of a Petition, which shall include (A) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) Contractor contends that the dispute was wrongly decided by the Agency Head; (B) a copy of the decision of the Agency Head; (C) copies of all materials submitted by Contractor to the Agency; (D) a copy of the decision of the Comptroller, if any, and (E) copies of all correspondence with, and material submitted by Contractor to, the Comptroller's Office. Contractor shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attention: 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, Contractor shall submit a copy of the statement of the substance of the dispute, cited in (A) above, to both the Agency Head and the Comptroller.
- B. Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the Agency shall respond to the statement of Contractor and make available to the CDRB all material it submitted to the Agency Head and to the Comptroller. Three complete copies of the Agency response shall be submitted to the CDRB at OATH's offices and one to 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 thirty (30) days.



- C. Further Proceedings. The CDRB shall permit 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 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 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 forty-five (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 ninety (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 Contract. 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 Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction or construction-related services, the Engineer, Resident Engineer, Engineering Audit Officer, or other designee of the Commissioner. A decision in favor of Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (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 of the State of New York. 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 Section 4-09 of the PPB Rules.
- 14.8 Any termination, cancellation, or alleged breach of this Contract prior to or during the pendency of any proceedings pursuant to this Article shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Article.

**ARTICLE 15**  
**NOISE CONTROL CODE**

- 15.1 In accordance with the noise abatement provisions of Section 24-216(b) of the Administrative Code:
- A. Devices and activities which will be operated, conducted, constructed, or manufactured pursuant to this Contract and which are subject to the provisions of the New York City Noise Control Code (the "Noise Control Code") shall be operated, conducted, constructed, or manufactured without causing a violation of such Noise Control Code.
  - B. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of the City's Department of Environmental Protection. Regulations promulgated pursuant to Section 24-216(b) of the Administrative Code after the bid openings for this Contract shall not alter its terms, conditions and specifications.

**ARTICLE 16**  
**LIENS**

If at any time before or within thirty (30) days after the Work herein agreed to be performed is completed and accepted by the City, any person claiming to have performed any labor or furnished any material toward the performance or completion of this Contract shall file with HPD, the Comptroller, or the office of any county court or clerk, any notice of the sort described in the Lien Law of the State of New York or any similar act of the Legislature of the State of New York, the City shall retain, from the moneys due or to become due under this Contract, so much of such money as shall be sufficient to pay the amount claimed in said notice, together with the reasonable costs of any actions brought or that may be brought to enforce such lien. The moneys so retained shall be held by the City until the lien thereon shall be discharged pursuant to law.

**ARTICLE 17**  
**DEFAULT**

- 17.1 Event of Default. In addition to those instances referred to in other Articles of this Contract, the Commissioner shall have the power to declare Contractor in Default of this Contract if:
- A. Contractor for any reason violates or fails to perform any term, covenant, or condition required to be performed by Contractor under this Contract; or
  - B. Contractor becomes insolvent; or
  - C. Contractor makes an assignment for the benefit of creditors pursuant to the laws of the State of New York; or
  - D. A voluntary or involuntary petition in bankruptcy is filed by or against Contractor; or

- E. Contractor fails to commence Work when notified to do so by HPD; or
  - F. Contractor abandons the Work; or
  - G. Contractor refuses to proceed with the Work when and as directed by HPD; or
  - H. Contractor reduces the working force of Contractor to a number which would be insufficient to perform the Work in accordance with this Contract, and fails or refuses to sufficiently increase such working force when ordered to do so by HPD; or
  - I. Contractor assigns, transfers, conveys or otherwise disposes of this Contract other than as herein permitted; or
  - J. A receiver is appointed to take charge of Contractor's property or affairs; or
  - K. Contractor unnecessarily or unreasonably or willfully delays the performance and completion of the Work, or the award of necessary Subcontracts, or the placing of necessary material and equipment orders; or
  - L. Contractor fails to perform this Contract in good faith and in accordance with its terms; or
  - M. The Work cannot be completed, or is not completed, within the time required hereby or within the time to which such completion may have been extended.
  - N. Contractor or any of its officers, directors, partners, five (5%) percent shareholders, principals, or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the PPB Rules.
- 17.2 Before the Commissioner exercises the power to declare Contractor in Default, the Commissioner shall give Contractor an opportunity to be heard upon not less than two (2) days' notice.
- 17.3 Force Majeure. Notwithstanding any provision of this Contract to the contrary, in the event of any Force Majeure Delay, then the time for performance of such obligations by Contractor shall be extended for such period as HPD shall find in writing to be the period of such delay or delays, but in no event more than sixty (60) days without the prior written consent of HPD. Contractor shall deliver written Notice to HPD of any Force Majeure Delay and the cause or causes thereof promptly after the beginning of such Force Majeure Delay. Contractor shall proceed in accordance with this Contract with those obligations the performance of which is not prevented by such Force Majeure Delay unless HPD, in writing, shall excuse Contractor from proceeding with all or part of such obligations.

## **ARTICLE 18**

### **TERMINATION**

- 18.1 Termination by the City Without Cause. HPD may postpone, delay, suspend, or terminate this Contract without cause.

- A. If HPD elects to terminate this Contract pursuant to this Section, HPD shall deliver to Contractor a Termination Notice specifying (A) that the Contract is being terminated pursuant to this Section, and (B) the Termination Date, which Termination Date shall be not less than thirty (30) days from the date of such Termination Notice.
- B. If HPD terminates this Contract pursuant to this Section, Contractor shall be entitled to payment for all Pre-Termination Work for which (A) Contractor submits a Requisition within thirty (30) days after the Termination Date, and (B) payment is otherwise due and payable in accordance with this Contract.
- C. The postponement, delay, suspension, or termination of this Contract pursuant to this Section shall not (A) give rise to any cause of action for damages against the City, or (B) constitute a waiver of any claims that the City might otherwise have against Contractor.

18.2 Termination Due to Default of Contractor. HPD may terminate this Contract at any time in whole or in part if HPD declares Contractor is in Default following the Hearing as set forth in Article 17 or as specified in other Articles of this Contract. HPD shall deliver to Contractor a Default and Termination Notice specifying (A) the basis for such termination, and (B) the Termination Date.

- A. If this Contract has been terminated pursuant to this Section, HPD shall provide to Contractor a written certification of the Default Costs, which certification shall be binding and conclusive upon Contractor, any surety, and any other person claiming under this Contract as to the amount of such Default Costs.
- B. HPD may deduct the Default Costs from such moneys as would have been payable to Contractor for the Pre-Termination Work. The balance of such moneys as would have been payable to Contractor for the Pre-Termination Work, if any, shall be paid to Contractor, subject to the other provisions of this Contract, without interest after completion of the Work. If the Default Costs, as so certified by HPD, exceed such moneys as would have been payable to Contractor for the Pre-Termination Work, Contractor shall pay any such excess to HPD upon demand.
- C. The Commissioner's determination that Contractor is in default shall be conclusive, final and binding on the parties and such a finding shall preclude Contractor from commencing a plenary action for any damages relating to this Contract. If Contractor protests the determination of the Commissioner, Contractor may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the Civil Practice Law and Rules of the State of New York.

18.3 Close-Out Procedures. Within thirty (30) days after the Termination Date, except as set forth in Paragraph 18.3(D) below, Contractor shall comply with all HPD and City close-out procedures, including but not limited to:

- A. stopping Work on the date and to the extent specified in the Default and Termination Notice or the Termination Notice, as the case may be;
- B. not incurring any further obligations or making any further payments pursuant to this Contract beyond the Termination Date;
- C. submitting all reports and other documents in the form required pursuant to this Contract;
- D. furnishing to HPD and the City within sixty (60) days of the effective date of such termination an inventory of all HPD or City-Owned Property, including, without limitation, all equipment, appurtenances and property (if any) purchased through or otherwise provided under this Contract, and carrying out any and all HPD or City directives concerning the disposition thereof;
- E. cooperating fully with HPD in order to effectuate the orderly transfer of all or any part of the Work in progress to HPD or its designee, including, without limitation, promptly (I) assigning to HPD or its designee such Subcontracts or other commitments as HPD may direct, and (II) taking such steps and executing and delivering such instruments and documents as may be necessary to allow HPD or its designee to complete the Work; and
- F. complying with any and all HPD or City directive(s) deemed necessary by HPD or the City concerning the termination of this Contract.

18.4 Completion of Work. HPD may complete the Work or cause the Work to be completed by such means and in such manner as HPD shall determine, including, but not limited to, (A) procuring one or more new contracts with or without public letting, (B) departing from, changing, or varying the terms and provisions of this Contract, and (C) accepting a lesser or differing standard of performance. Such departure, change or variation, shall not affect the conclusiveness of HPD's certification of Default Costs, nor shall it constitute a defense to an action to recover the amount by which such Default Costs exceed the amount which would have been payable to Contractor. HPD may remove, dispose of, or utilize any materials and supplies of Contractor remaining on the site of any Work.

18.5 No Release. Notwithstanding any provision of this Contract to the contrary, termination of this Contract pursuant to this Article shall not release Contractor from any liability to the City, and the City may withhold payments to Contractor until such time as the exact amount of damages due to the City from Contractor shall be determined.

18.6 Additional Rights. In addition to or as an alternative to the right to terminate this Contract as set forth in this Article, the City retains all the rights and remedies to which it may be entitled at law or in equity.

18.7 Partial Termination. Following any partial termination of this Contract, Contractor will continue to perform the remainder of this Contract in conformity with the terms of this Contract.

## **ARTICLE 19**

### **INDEPENDENT CONTRACTOR**

- 19.1 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 Contract or any performance pursuant to or in connection with this Contract, 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.
- 19.2 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 Contract 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 Contract. Nothing in this Contract, and no entity or person's performance pursuant to or in connection with this Contract, 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 Contract or any performance pursuant to or in connection with this Contract, (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 Contract, nothing in the Contract and no performance pursuant to or in connection with the Contract shall impose any liability or duty on the City to any person or entity whatsoever.

**ARTICLE 20**  
**LIQUIDATED DAMAGES**

- 20.1 Schedule of Liquidated Damages. Any failure by Contractor to perform Work within the time and in the manner specified in this Contract, or any violation of any of the terms and conditions of this Contract, may adversely affect the City, including HPD. In view of the difficulty of accurately ascertaining the damages that the City, including HPD, shall suffer by reason of such failure or violation, HPD and Contractor have agreed to the following schedule of liquidated damages: (A) \$500 per day, per occurrence, for any Work not timely completed, and (B) \$1,000 per day, per occurrence, for failure to perform any Work, as specified in a Work Order.
- 20.2 Assessment of Liquidated Damages:
- A. Liquidated damages shall be assessed as follows:
    - I. If Contractor fails to perform or cause to be performed any Work within the time and in the manner specified in this Contract, or violates or fails to perform any of the terms and conditions of this Contract, HPD shall deliver written Notice to Contractor specifying the failure or violation and setting forth a reasonable period, determined in HPD's sole discretion, within which Contractor may cure such failure or violation.
    - II. If Contractor fails to timely cure such failure or violation, then upon the delivery by HPD to Contractor of a second Notice, Contractor shall pay to HPD liquidated damages in the amounts set forth above, from the date of the first Notice until the earlier to occur of either the completion of the cure or termination of this Contract.
  - B. The assessment of liquidated damages shall be at HPD's sole discretion. HPD, in its sole discretion, shall deduct and retain the amount of any such liquidated damages from any moneys which may become due to Contractor hereunder. If the liquidated damage amount assessed by HPD in accordance with this Section shall be greater than the total amount of moneys available under this Contract, then Contractor shall be liable to pay the difference upon demand by HPD.
- 20.3 No Waiver of Other Remedies. Liquidated damages assessed in accordance with this Article are not intended to be, nor shall they be treated as being, a partial or full waiver or discharge of either Contractor's obligation to indemnify the City or of any other remedy provided for by this Contract or by law.

**ARTICLE 21**  
**CERTAIN REPRESENTATIONS, WARRANTIES,**  
**AND COVENANTS OF CONTRACTOR**

- 21.1 Legal Authority. Contractor represents and warrants that (A) Contractor is duly organized, validly existing, and in good standing, and authorized to do business in the State of New York, (B) Contractor has full power, authority, and legal right to execute,

deliver, and perform this Contract, and (C) this Contract has been duly authorized, executed, and delivered by Contractor and constitutes the legal, valid, and binding obligation of Contractor, enforceable in accordance with its terms.

- 21.2 Suitability to do Business with the City. Contractor represents and warrants that (A) all statements, information, and materials provided by Contractor in connection with the selection of Contractor for performance of the Work, including, but not limited to, any information included in Contractor's Procurement and Sourcing Solutions Portal (PASSPort) disclosure (formerly the VENDEX Questionnaire or Certificate of No change), were true, accurate, complete, and not in any way misleading when submitted and remain true, accurate, complete, and not in any way misleading as of the date of this Contract, and (B) Contractor is not in arrears or default upon any debt, contract, or other obligation to the City.
- 21.3 No Inducement. Contractor represents, warrants, and covenants that (A) no person or selling agency has been employed or retained to solicit or secure this Contract, and (B) Contractor has not made and shall not make any payment of, or any agreement or understanding for the payment of, any commission, percentage, brokerage fee, contingency fee, or any other compensation, payment, gift, or thing of value in connection with the procurement of this Contract.
- 21.4 Breach. The representations or warranties of Contractor contained in this Article and in the remainder of this Contract are made for the express purpose of inducing the City to enter into this Contract, and the City has executed this Contract in reliance upon such representations and warranties. If HPD becomes aware of any breach or violation of any of the representations and warranties contained in this Contract, HPD may annul this Contract without liability, entitling HPD to recover all monies paid hereunder and Contractor shall not then make claim for, or be entitled to recover, any sum or sums due under this Contract. This remedy, if effected, shall not constitute the sole remedy afforded HPD for the falsity or breach, nor shall it constitute a waiver of HPD's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Contract.

## **ARTICLE 22**

### **LIABILITIES**

- 22.1 Exclusive Liability to Contractor. The liability of the City, including HPD, to Contractor under this Contract shall be limited to the funds appropriated by the City for this Contract. The City, including HPD, shall not be liable to any other person or entity for the satisfaction of any remedy of Contractor for failure of HPD to perform any of HPD's obligations hereunder. The City shall not have any liability or duty to any person, firm, corporation, or governmental body for any act (of omission or commission), liability, or obligation of Contractor, whether arising from Contractor's actions under this Contract or otherwise.



- 22.2 Continuing Liability of Contractor. Notwithstanding any other provision of this Contract, Contractor shall not be relieved of liability to the City for damages sustained by HPD by virtue of Contractor's breach of this Contract and Contractor's liability therefor shall survive the expiration or earlier termination of this Contract. HPD may withhold payments to Contractor for the purpose of set-off against such damages until such time as the exact amount of damages due to HPD or the City from Contractor is determined.
- 22.3 No Damages for Delay. Contractor shall not make any claim for damages for delay in the performance of this Contract occasioned by any act or omission to act of the City or any of its representatives and agrees that all it may be entitled to on account of any such delay is an extension of time to complete performance of a Work Order as provided herein.

### **ARTICLE 23**

#### **ESTOPPEL AND WAIVER**

- 23.1 No Estoppel. Neither the City nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment, or certification made or given under or in connection with this Contract by the City, the Commissioner, or any officer, agent, or employee of the City: (A) from showing the true and correct classification, amount, quantity, or character of the Work actually performed, or that any such determination, decision, order, letter, payment, or certification was untrue, incorrect, or improperly made in any particular way, or that the Work or any part thereof does not in fact conform to the requirements of this Contract, or (B) from demanding and recovering from Contractor any overpayments made to Contractor, or such damages as the City may sustain by reason of Contractor's failure to perform each and every part of this Contract in strict accordance with its terms, or (C) both (A) and (B).
- 23.2 No Waiver.
- A. The failure or delay by the City, including HPD, to insist in any one or more cases upon the strict performance of any of Contractor's obligations hereunder or to exercise or enforce any right or remedy herein contained shall not constitute and shall not be construed as a waiver or a relinquishment for the future of such obligation, right, or remedy.
  - B. No waiver shall be construed to be a modification of the Contract unless and until the same is agreed to in writing by the parties as set forth in Article 27.
  - C. The waiver by the City, including HPD, of a breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach.

**ARTICLE 24**  
**NOTICES**

24.1 Notices. All Notices given or required to be given under this Contract shall be in writing and shall be transmitted by (i) hand delivery, (ii) certified or registered U.S. mail, return receipt requested, (iii) reputable overnight courier, or (iv) facsimile.

A. Notices to Contractor shall be delivered, sent, or transmitted to the business address specified in Contractor's bid.

B. Notices to HPD shall be delivered, sent, or transmitted to:

Department of Housing Preservation and Development  
100 Gold Street  
New York, New York 10038  
Attention: Assistant Commissioner, Division of Maintenance  
Facsimile: 212-863-7777

with a copy to:

Department of Housing Preservation and Development  
100 Gold Street  
New York, New York 10038  
Attention: General Counsel  
Facsimile (212) 863-8377

24.2 Delivery. Notices transmitted by hand delivery shall be deemed to have been given upon actual delivery or refusal of receipt. Notices transmitted by certified or registered U.S. mail, return receipt requested shall be deemed to have been given upon the third (3rd) day after such Notice has been deposited in the United States mail, postage prepaid. Notices transmitted by overnight courier shall be deemed to have been given upon actual delivery or refusal of receipt. Notices transmitted by facsimile shall be deemed to have been given upon confirmed receipt. Any notice of a change in address shall only be deemed to have been given when received by the other party.

24.3 Change of Address. Either Contractor or HPD may, by written notice to the other, given as provided in this Article, change the address to which Notices are to be sent.

**ARTICLE 25**  
**PAYMENT AND PERFORMANCE BOND**

25.1 Performance and payment security will be required per individual Work Order, for one hundred percent (100%) of the total price of the Work Order, when that total price exceeds either: \$150,000 if the Work Order is federally funded; or \$1,000,000 if the Work Order is other than federally funded.

- 25.2 For each Work Order where such security is required, Contractor must deliver to the City (1) an executed bond in the value of such Work Order to secure the faithful performance of such Work Order, and (2) an executed bond in the value of such Work Order to secure the payment of all persons performing labor or furnishing materials in connection with such Work Order.
- 25.3 The executed bonds shall be prepared on the bond forms attached hereto as Exhibit C, and have as surety thereunder a surety company approved by the City and authorized to do business in the State of New York.
- 25.4 In lieu of the required bonds, Contractor may deposit with the Comptroller cash, obligations of the City or other security which the Comptroller shall approve as being of a value equal to the amount of such bonds.
- 25.5 Obligations of the City deposited by Contractor in lieu of the required bonds may be sold by the Comptroller and the proceeds used for any purpose for which the principal or surety on such bonds would be liable under the terms of this Contract. Contractor shall not be entitled to receive interest on any cash or other security deposited.

**ARTICLE 26**  
**PAYMENT GUARANTEE**

- 26.1 In the event the terms of this Contract do not require Contractor to provide a payment bond or where the Contract does not require a payment bond for one hundred (100%) percent of the Contract price, the City shall, in accordance with the terms of this Article, guarantee payment of all lawful claims for:
- A. Wages and compensation for labor performed and/or services rendered; and
  - B. Materials, equipment, and supplies provided, whether incorporated into the Work or not, when demands have been filed with the City as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Work performed hereunder (hereinafter referred to as the "beneficiary") at the direction of the City or Contractor.
- 26.2 The provisions of Section 26.1 are subject to the following limitations and conditions:
- A. The guarantee is made for the benefit of all beneficiaries as defined in Section 26.1 provided that those beneficiaries strictly adhere to the terms and conditions of the following Paragraphs 26.2(B) and 26.2(C).
  - B. Nothing in this Article shall prevent a beneficiary providing labor, services or material for the Work from suing Contractor for any amounts due and owing the beneficiary by Contractor.

- C. Every person who has furnished labor or material, to Contractor or to a Subcontractor of Contractor, in the prosecution of the Work and who has not been paid in full therefor before the expiration of a period of ninety (90) Days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action; provided, however, that a person having a direct contractual relationship with a Subcontractor of Contractor but no contractual relationship express or implied with Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to Contractor within one hundred twenty (120) days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by Contractor by other means, such notice shall be deemed sufficient.
- D. Except as provided in Labor Law Section 220-g, no action on this payment guarantee shall be commenced after the expiration of the one-year limitations period set forth in Section 137(4)(b) of the State Finance Law.
- E. Contractor shall promptly forward to the City any notice or demand received pursuant to Paragraph 26.2(C) above. Contractor shall inform the City of any defenses to the notice or demand and shall forward to the City any documents the City requests concerning the notice or demand.
- F. All demands made against the City by a beneficiary of this payment guarantee shall be presented to the Assistant Commissioner along with all written documentation concerning the demand which the Assistant Commissioner deems reasonably appropriate or necessary, which may include, but shall not be limited to: the subcontract; any invoices presented to Contractor for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of Contractor and that the demand has not been paid by Contractor within the time allowed for such payment by the subcontract; and copies of any correspondence between the beneficiary and Contractor concerning such demand. The City shall notify Contractor that a demand has been made. Contractor shall inform the City of any defenses to the demand and shall forward to the City any documents the City requests concerning the demand.
- G. The City shall make payment only if, after considering all defenses presented by Contractor, it determines that the payment is due and owing to the beneficiary making the demand.

- H. No beneficiary shall be entitled to interest from the City, or to any other costs, including, but not limited to, attorneys' fees, except to the extent required by State Finance Law Section 137.
- 26.3 Upon the receipt by the City of a demand pursuant to this Article, the City may withhold from any payment otherwise due and owing to Contractor under this Contract an amount sufficient to satisfy the demand.
- A. In the event the City determines that the demand is valid, the City shall notify Contractor of such determination and the amount thereof and direct Contractor to immediately pay such amount to the beneficiary. In the event Contractor, within seven (7) days of receipt of such notification from the City, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by Contractor to the beneficiary for the amount of the demand determined by the City to be valid. Contractor, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the City, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.
  - B. In the event that the amount otherwise due and owing to Contractor by the City is insufficient to satisfy such demand, the City may, at its option, require payment from Contractor of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the City may have under law or Contract.
  - C. In the event the City determines that the demand is invalid, any amount withheld pending the City's review of such demand shall be paid to Contractor; provided, however, no lien has been filed. In the event a claim or an action has been filed, the terms and conditions set forth in Section 8.3 shall apply. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York and terms of this Contract.
- 26.4 The provisions of this Article shall not prevent the City and Contractor from resolving disputes in accordance with the PPB Rules, where applicable.
- 26.5 In the event the City determines that the beneficiary is entitled to payment pursuant to this Article, such determination and any defenses and counterclaims raised by Contractor shall be taken into account in evaluating Contractor's performance.
- 26.6 Nothing in this Article shall relieve Contractor of the obligation to pay the claims of all persons with valid and lawful claims against Contractor relating to the Work.
- 26.7 Contractor shall not require any performance, payment or other bonds of any Subcontractor if this Contract does not require such bonds of Contractor.

- 26.8 The payment guarantee made pursuant to this Article shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to Contractor or its Subcontractors in the prosecution of the Work under this Contract all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the City on the payment guarantee provided by this Article within the one-year limitations period set forth in Section 137(4)(b).

**ARTICLE 27**  
**CONTRACT CHANGES AND INCREASES**

- 27.1 Changes may be made to this Contract only as duly authorized in writing by the ACCO or the ACCO's designee. Contractors deviating from the requirements of an original Work Order without a duly approved change order, do so at their own risk. All such changes, modifications and amendments will become a part of the original Contract.
- 27.2 Contract changes will be made only for (A) work necessary to complete the Work included in the Scope of Work of a Work Order, (B) non-material changes thereto, and (C) any Contract revision deemed necessary by the ACCO. Changes are not permitted for any material alteration in the Scope of Work of this Contract.
- 27.3 Changes may include any one or more of the following:
- A. Specification changes to account for design errors or omissions;
  - B. Changes in contract amount due to authorized additional or omitted Work. Any such changes require appropriate price and cost analysis to determine reasonableness. In addition, except for non-construction requirements contracts, all changes that cumulatively exceed the greater of ten per cent of the original contract amount or \$100,000 shall be approved by the CCPO (for non-construction contracts) or the Director of the Office of Construction (for construction and construction-related contracts).
  - C. Extensions of a contract term for good and sufficient cause for a cumulative period not to exceed one year from the date of expiration of the current contract. Requirements contracts shall be subject to this limitation;
  - D. Changes in delivery location;
  - E. Changes in shipment method;
  - F. Any other change not inconsistent with the PPB Rules.
- 27.4 Contractor may be entitled to a price adjustment for extra Work performed or to be performed pursuant to a written change order.
- A. If any part of the Work is necessarily delayed by a change order, Contractor may be entitled to an extension of time for performance. Adjustments to price shall be validated for reasonableness by using appropriate price and cost analysis.

- B. Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification by post-audit. If such post-audit reveals that Contractor's costs for the change order Work were inaccurately stated during negotiations, the agency shall recoup the amount by which the costs were inaccurately stated by proportionately reducing the price under the change order. This remedy is not exclusive but is in addition to all other rights and remedies of the City.

## **ARTICLE 28**

### **NON-DISCRIMINATION IN EMPLOYMENT**

- 28.1 **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.
- 28.2 **N.Y. Labor Law § 220-e.** If this Contract 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 Contract 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 Contract 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 Contract a penalty of \$50 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Contract; and

- D. This Contract may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 28.2.

The provisions of this Section 28.2 shall be limited to operations performed within the territorial limits of the State of New York.

28.3 Admin. Code § 6-108. If this Contract 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 Section 28.3(A) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 28.3 shall, upon conviction thereof, be punished by a fine of not more than \$100 or by imprisonment for not more than 30 days, or both.

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

- A. This Contract 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 Contract 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 Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Contract 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 Contract; 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 HPD declaring the Contractor to be non-responsible.

- D. The Contractor agrees to include the provisions of the foregoing Sections 28.4(A)-(C) in every subcontract or purchase order in excess of \$100,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 28.4.
- 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 Section 28.4(E).
- F. Nothing contained in this Section 28.4 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.

## **ARTICLE 29**

### **MINIMUM AND PREVAILING WAGES**

- 29.1 Minimum Wage. All persons employed by Contractor or any Subcontractor in the manufacture or furnishing of supplies, materials or equipment, or the furnishing of Work, labor, or services used in the performance of this Contract, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the amount then specified as the minimum wage by the Federal Fair Labor Standards Act.
- 29.2 Prevailing Wage. All persons employed by Contractor or any Subcontractor in the manufacture or furnishing of supplies, materials or equipment, or the furnishing of Work, labor or services, used in the performance of this Contract whose wage is required to be fixed pursuant to Labor Law Article 8 or to the Federal Davis Bacon Act, shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the amount then specified as the prevailing wage by the applicable provisions of Labor Law Article 8 or of the Federal Davis Bacon Act, as set forth in Exhibit D attached hereto and made a part hereof.

**ARTICLE 30**  
**INVESTIGATIONS**

- 30.1 Contractor shall cooperate fully and faithfully with any investigation, audit, or inquiry conducted by the State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.
- 30.2 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, the 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 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 HPD, that is seeking testimony concerning the award of, or performance under this Contract; then
- 30.3 A. The Commissioner 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 may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 30.5 without the City incurring any penalty or damages for delay or otherwise.
- 30.4 The penalties which may attach after a final determination by the Commissioner may include but shall not exceed:
- A. The disqualification from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City for a period not to exceed five (5) years from the date of an adverse determination with respect to any person, or any entity of which such person was a member at the time the testimony was sought; and/or

- B. The cancellation or termination of any and all existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination. Moneys lawfully due for goods delivered, Work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.
- 30.5 The Commissioner shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in the following Paragraphs 30.5(A) and 30.5(B). He or she may also consider, if relevant and appropriate, the criteria established in the following Paragraphs 30.5(C) and 30.5(D) in addition to any other information which 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 Section 30.4, provided that the party or entity has given actual notice to the Commissioner upon the acquisition of the interest, or at the hearing called for in Section 30.3(A) 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.
- 30.6
- A. The term "license" or "permit" as used in this Article 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 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 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 shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- 30.7 In addition to and notwithstanding any other provision of this Contract, the Commissioner may in his or her sole discretion terminate this Contract upon not less than three (3) days written notice in the event Contractor fails to report promptly in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by Contractor, or affecting the performance of this Contract.

### **ARTICLE 31**

#### **CONFLICT OF INTEREST**

- 31.1 Contractor represents, warrants, and covenants that:
- A. Contractor and the directors, officers, members, partners, and employees of Contractor do not currently have and shall not during the Term of this Contract acquire any direct or indirect interest which would or could directly or indirectly conflict in any manner or degree with the performance of the Work.
  - B. Contractor and the directors, officers, members, partners, and employees of Contractor do not currently have and shall not during the Term of this Contract enter into or become subject to any direct or indirect obligation or duty which would or could directly or indirectly conflict in any manner or degree with the performance of the Work.
  - C. Contractor and the directors, officers, members, partners, and employees of Contractor are not currently engaged in, and shall not during the Term of this Contract undertake, any activities which would or could directly or indirectly conflict in any manner or degree with the performance of the Work.
  - D. With respect to securing or soliciting this Contract, Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*).
- 31.2 Consistent with City Charter § 2604 and other related provisions of the City Charter, the Administrative 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 Contract that 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 Contract. This Section 31.3 shall not prevent directors, officers, members, partners, or employees of Contractor from participating in decisions relating to this Contract where their sole personal interest is in Contractor.

- 31.3 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 Contractor if such employment or service would violate Chapter 68 of the City Charter.

## **ARTICLE 32**

### **CONFIDENTIALITY AND PUBLICATIONS**

- 32.1 All of the Information is confidential and is the sole and exclusive property of the City.
- 32.2 Contractor shall neither cause nor permit any of the Information to be communicated, revealed, released, disseminated, distributed, published, or otherwise made available in any written or non-written form to any person or entity other than HPD without the prior written consent of HPD. Contractor shall (A) use the Information only for the performance of Work and not for any other purpose, (B) exercise extreme care to take all measures which are necessary in order to maintain and protect the confidentiality of the Information, and (C) upon the conclusion of the Term or at such earlier date as may be directed by HPD, either destroy or return to HPD, as directed by HPD, all copies in any form of any Information which are then in Contractor's possession.
- 32.3 If Contractor publishes any work concerning any Information, any aspect of performance under this Contract, or any the results and accomplishments attained in such performance, then the City shall have an irrevocable license to (A) reproduce, publish, and otherwise use such publication, and (B) authorize others to reproduce, publish, and otherwise use such publication. If Contractor receives compensation as a result of the publication of such work, HPD shall receive a reasonable royalty fee. Nothing in this Section shall be deemed to authorize any such publication by Contractor without the prior written consent of HPD.
- 32.4 All obligations of Contractor pursuant to this Article shall remain in full force and effect following the expiration or earlier termination of this Contract. The provisions of this Article shall survive the expiration or earlier termination of this Contract.

## **ARTICLE 33**

### **INVENTIONS, PATENTS, AND COPYRIGHTS**

- 33.1 Contractor shall be promptly and fully report any discovery or invention arising out of or developed in the course of the performance of this Contract to HPD and, if such Work is paid for with Federal funds, to the Federal Government for determination as to whether patent protection thereon shall be sought and how the rights therein, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

- 33.2 Contractor shall not copyright, or register any notice of copyright in connection with, any report, document, or other data produced or developed in whole or in part in connection with the Work and/or or with funds received under this Contract.
- 33.3 The foregoing Sections 33.1 and 33.2 shall not apply to, or prevent Contractor from asserting or protecting its rights in, any discovery, invention, report, document, or data which existed prior to, or was developed or discovered independently from, any activities directly related to this Contract.
- 33.4 Contractor shall be solely responsible for and shall defend, indemnify, and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) and judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by Contractor and/or its Subcontractors in the performance or completion of the Work. Insofar as the facts or any applicable laws, rules, and/or regulations relating to any claim would preclude the City from being completely indemnified by Contractor, the City shall be partially indemnified by Contractor to the fullest extent permitted by law.

#### **ARTICLE 34**

##### **CLAIMS AND ACTIONS THEREON**

- 34.1 Notice. Any claim, that is not subject to dispute resolution under the PPB Rules or this Contract, 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 herein before provided.
- 34.2 Limitation of Time of Action. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the earlier to occur of (A) the date the claim arises, (B) the completion of the Work under the Work Order which is the source of the claim, or (C) the expiration or termination of this Contract.
- 34.3 Cooperation in Defense of Claims or Actions Against the City. If a party other than the City or Contractor makes any claim or commences any action in any way relating to this Contract or any Work performed hereunder, Contractor shall, at no expense to the City, diligently render to the City, without additional compensation, any and all assistance which the City may require.
- 34.4 Notice of Legal Action or Proceeding. Within three (3) working days following the initiation of any legal action or proceeding by or against Contractor in connection with or relating to this Contract, Contractor shall deliver to HPD written Notice of such legal action or proceeding.

- 34.5 No Claims Against Officers, Agents, or Employees. Contractor shall not make any claim against any officer, agent, or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

## **ARTICLE 35**

### **FORUM: CHOICE OF LAW, CONSENT TO JURISDICTION, AND VENUE**

- 35.1 This Contract shall be deemed to have been executed in the City and State of New York, regardless of the domicile of Contractor, and shall be governed by and construed in accordance with the laws of the State. Contractor shall bring any actions, claims, or legal proceedings in any way pertaining to this Contract in the State Courts or Federal Courts physically situated in New York City and in no other court or tribunal whatsoever. Any and all claims asserted by or against the City arising pursuant to this Contract or related thereto shall be heard and determined either in Federal Courts located in New York City or in State Courts located in New York County.
- 35.2 If the City initiates any action against Contractor in Federal Court or in State Court, service of process may be made on Contractor either in person, wherever Contractor may be found, or by registered mail addressed to Contractor at the address of Contractor first set forth above, or to such other address as Contractor may provide to HPD by written Notice.
- 35.3 With respect to any action between the City and Contractor in State Court, Contractor expressly waives and relinquishes any rights it might otherwise have (A) to move to dismiss on grounds of *forum non conveniens*, (B) to remove to Federal Court, and (C) to move for a change of venue to a State Court outside New York County.
- 35.4 With respect to any action between the City and Contractor in Federal Court located in New York City, Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside New York City.
- 35.5 If Contractor commences any action against the City in a court located other than in New York City, Contractor shall, upon request of the City, either consent to a transfer of the action to a court of competent jurisdiction located in New York City or, if the court where the action is initially brought will not or cannot transfer the action, Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction located in New York City.
- 35.6 If any provision of this Article is held unenforceable for any reason, each and every other provision of this Article shall nevertheless remain in full force and effect.

## **ARTICLE 36**

### **ASSIGNMENT**

- 36.1 Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract or any of the rights, obligations, or duties of Contractor pursuant to this Contract, in whole or in part, including, but not limited to, the right of Contractor to execute this Contract, or the right, title, or interest of Contractor in this Contract or any part thereof, or assign, by



power of attorney or otherwise, any of the moneys due or to become due pursuant to this Contract, without the prior written consent of HPD, in its sole discretion.

- 36.2 Any purported assignment, transfer, conveyance, or other disposition of this Contract or of any of the rights, obligations, or duties of Contractor pursuant to this Contract without the prior written consent of HPD shall be deemed null and void and of no force and effect and shall be cause for termination of this Contract, at the election of HPD. Upon any such termination, the City and HPD shall be relieved and discharged from any and all liability and obligation arising from this Contract to Contractor, its assignees, or transferees, and Contractor shall forfeit to the City all moneys theretofore earned and unpaid pursuant to this Contract, except so much thereof as may be necessary to pay Contractor's employees.
- 36.3 The provisions of this Article shall not hinder, prevent, or affect an assignment by Contractor for the benefit of creditors made pursuant to any applicable law.
- 36.4 The City may assign this Contract to any person or entity having authority to accept such assignment.
- 36.5 The consent of HPD to a particular assignment, transfer, conveyance, or disposition shall not dispense with the necessity of such consent to any other or future assignments.

### **ARTICLE 37**

#### **ELECTRONIC FUNDS TRANSFER**

- 37.1 In accordance with Section 6-107.1 of the New York City Administrative Code, Contractor agrees to accept payments under this Contract 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 Contract, Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" through the City's Payee Information Portal, available at [www.nyc.gov/pip](http://www.nyc.gov/pip) in order to provide the Commissioner of Finance with information necessary for 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 Contractor shall constitute full satisfaction by the City for the amount of the payment under this Contract. The account information supplied by Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by law.

- 37.2 The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances:
- A. for individuals or classes of individuals for whom compliance imposes a hardship;
  - B. for classifications or types of checks; or
  - C. in other circumstances as may be necessary in the interest of the City.

**ARTICLE 38**  
**WHISTLEBLOWER PROTECTION EXPANSION ACT**

- 38.1 In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively, 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 (A) the Commissioner of the Department of Investigation, (B) a member of the New York City Council, the Public Advocate, or the Comptroller, or (C) the City Chief Procurement Officer, the Agency Chief Contracting Officer, the Agency head, or Commissioner.
- 38.2 If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of Paragraph 38.1 above, 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: (A) an injunction to restrain continued retaliation, (B) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (C) reinstatement of full fringe benefits and seniority rights, (D) payment of two times back pay, plus interest, and (E) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- 38.3 Contractor shall post a notice, attached hereto and made a part hereof as Rider 2, in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
- A. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
  - B. 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.

- 38.4 For the purposes of this Article, “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.
- 38.5 This Article is applicable to all of Contractor’s Subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this language and Rider 2 in all subcontracts with a value a value in excess of \$100,000.

### **ARTICLE 39**

#### **PAID SICK LEAVE LAW**

39.1 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.<sup>2</sup> Contractors of the City of New York 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 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”).
- C. Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Contract. Contractor further acknowledges that such compliance is a material term of this Contract and that failure to comply with the PSLL in performance of this Contract may result in its termination.
- D. 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 Contract. 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.
- E. 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](http://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

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<sup>2</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

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.

### 39.2 Pursuant to the PSLL 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 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.
- 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 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.
- C. An employee entitled to sick time pursuant to the PSLL 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.

39.3 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 section 190(2) of the New York State Labor Law;
- 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 section 336-c of the New York State Social Services Law.

39.4 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.

39.5 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 [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave).
- B. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50 for each employee who was not given appropriate notice.

39.6 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.

39.7 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 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 PSLL 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.

39.8 More Generous Policies and Other Legal Requirements: Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing

more generous sick time. The 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.

## **ARTICLE 40**

### **HIRING AND EMPLOYMENT REQUIREMENTS**

- 40.1 HireNYC: This Article applies to construction contracts of \$1,000,000 or more. Contractor shall comply with the requirements of Sections 40.2 – 40.6 for all non-trades jobs (e.g., for an administrative position arising out of Work and located in New York City). Contractor shall reasonably cooperate with SBS and the City on specific outreach events, including “Hire-on-the-Spot” events, for the hiring of trades workers in connection with the Work.
- 40.2 Enrollment: Contractor shall enroll with the HireNYC system, found at [www.nyc.gov/sbs](http://www.nyc.gov/sbs), within thirty (30) days after the registration of this Contract pursuant to Section 328 of the City Charter. 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 the City, and, if so, the approximate start date of the first hire.
- 40.3 Job Posting Requirements:
- A. Once enrolled in HireNYC, 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 Contractor’s representative charged with overseeing hiring. 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.
  - B. After enrollment through HireNYC and submission of relevant information, SBS will work with 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 Contractor for interviews. Contractor must interview referred applicants whom it believes are qualified.

- C. After completing an interview of a candidate referred by HireNYC, Contractor must provide feedback via the portal within twenty (20) business days to indicate which candidates were interviewed and hired, if any. In addition, 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 Contractor does not have any job openings covered by this Rider in any given year, 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 pursuant to City Charter section 328 and each anniversary date.
- D. These requirements do not limit Contractor's ability to assess the qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Article shall be interpreted so as to require Contractor to employ any particular worker.
- E. In addition, the provisions of this Article shall not apply to positions that 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. Contractor shall not be required to report such openings with HireNYC. However, Contractor shall enroll with the HireNYC system pursuant to Section 40.2, above, and, if such positions subsequently become open, then the remaining provisions of this Article will apply.

- 40.4 Breach and Liquidated Damages: If Contractor fails to comply with the terms of the Contract and this Article 35.6 ( 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 Agency may assess liquidated damages in the amount of \$2,500 per breach. For all other events of noncompliance with the terms of this Article 35.6, the Agency may assess liquidated damages in the amount of \$500 per breach. Furthermore, in the event Contractor breaches the requirements of this Article 35.6 during the term of the Contract, the City may hold Contractor in default of this Contract.
- 40.5 Audit Compliance: In addition to the auditing requirements set forth in other parts of the Contract, 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. Contractor shall permit an inspection within seven (7) business days of the request.
- 40.6 Other Reporting Requirements: 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, including any requirement that the City



maintain a publicly accessible database. In addition, Contractor agrees to comply with all reporting requirements imposed by Law, or as otherwise requested by the City.

- 40.7 Federal Hiring Requirements: If this Contract is federally funded (as indicated elsewhere in this Contract), Contractor shall comply with all federal hiring requirements as may be set forth in this Contract, 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 and 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.

#### **ARTICLE 41**

##### **PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

- 41.1 Contractor warrants and represents that neither Contractor nor any substantially owned affiliated company of Contractor is participating or shall participate in an international boycott in violation of the provisions of the Federal Export Administration Act of 1979, as amended (the "Export Act"), or the regulations of the Federal Department of Commerce promulgated pursuant thereto.
- 41.2 Upon the final determination or conviction by the Federal Department of Commerce, any other Federal agency, or any Federal Court that Contractor or a substantially owned affiliated company of Contractor has participated in or is participating in an international boycott in violation of the provisions of the Export Act, the Comptroller may, at his or her option, terminate this Contract or render this Contract forfeit and void.
- 41.3 Contractor shall comply in all respects with the provisions of Section 6-114 of the Administrative Code and the rules issued by the Comptroller pursuant thereto.

#### **ARTICLE 42**

##### **MACBRIDE PRINCIPLES**

- 42.1 MacBride Principles. In accordance with Section 6-115.1 of the Administrative Code, Contractor represents, warrants, and covenants that Contractor, any individual or legal entity in which Contractor holds a ten percent (10%) or greater ownership interest, and any individual or legal entity which holds a ten percent (10%) or greater ownership interest in 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 as hereinafter defined, and shall permit independent monitoring of their compliance with such principles.
- 42.2 The representations, warranties, and covenants set forth in the foregoing Section 42.1 are material conditions to this Contract. If HPD receives information regarding any violation thereof, HPD shall review such information and give Contractor an opportunity

to respond. If HPD finds that a violation has occurred, HPD may declare Contractor in Default and procure the Work from another source in any manner HPD deems proper. In the event of such Default, Contractor shall pay to the City, or the City, in its sole discretion, may withhold from any amounts otherwise payable to Contractor, the difference between the Total Contract Price for the uncompleted portion of this Contract and the cost to HPD of completing performance of this Contract either itself or by engaging another contractor or contractors. HPD may also hold Contractor in partial or total Default in accordance with Article 17 and/or may seek debarment or suspension of Contractor. The rights and remedies of HPD pursuant to this Article shall be in addition to, and not in lieu of any rights and remedies HPD has pursuant to this Contract or by operation of law.

42.3 “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:

- A. increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- B. take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- C. ban provocative religious or political emblems from the workplace;
- D. publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- E. establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- F. abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- G. develop training programs that will prepare substantial numbers of current employees from underrepresented 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 underrepresented religious groups;
- H. establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- I. appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

**ARTICLE 43**  
**ADDITIONAL TERMS AND CONDITIONS**

- 43.1 Contract. This Contract shall be deemed to be comprised of (A) the text hereof, (B) the exhibits annexed hereto, (C) the documents distributed by HPD and the documents submitted by Contractor in connection with the selection of Contractor for performance of the Work, to the extent that such documents or portions thereof are not specifically excluded and are not inconsistent with any of the other documents described in this Section, including, but not limited to, any Invitation to Bid, Information for Bidders, Bid, Notice of Award, and/or Notice to Proceed with Work, (D) the PPB Rules, to which this Contract is subject and which shall prevail over any other part of this Contract in the event of any conflict; and (E) all provisions required by law to be inserted in this Contract, whether actually inserted or not.
- 43.2 Headings. Notwithstanding any provision of this Contract to the contrary, the titles and headings contained in this Contract are for reference only and shall not be deemed to affect in any way the meaning or interpretation of this Contract.
- 43.3 Conditions Precedent. Notwithstanding any provision of this Contract to the contrary, this Contract shall not become binding and effective unless and until:
- A. the Comptroller certifies by endorsement of his or her certificate hereon that there remains unexpended and unapplied a balance of the appropriation or fund applicable hereto sufficient to pay the estimated expenses of executing this Contract;
  - B. the Mayor approves this Contract pursuant to the provisions of Executive Order No. 42 dated October 9, 1975, if such Executive Order requires such approval,
  - C. the Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975, certifies that performance of this Contract is in accordance with the City's financial plan, if such Executive Order requires such certification; and,
  - D. the FCB approves this Contract pursuant to the FEA, if the regulations of FCB pursuant to the FEA require such approval.
- The requirements of this Section shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Contract to be effective and for the expenditure of City funds.
- 43.4 Survival. The terms of Articles 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 25, 26, 28, 29, 30, 31, 32, 33, 34, 36, 41, 42 and any other provisions of this Contract which, by their terms, expressly provide that they shall survive the expiration or other termination of this Contract, shall remain in effect beyond the Expiration Date or Termination Date.

43.5 No Third-Party Beneficiaries. This Contract is intended to inure solely to the benefit of the undersigned parties, and there are no intended third-party beneficiaries hereof.

43.6 Counterparts. This Contract may be executed simultaneously in several counterparts, each of which will be deemed to be an original, but all of which together shall be deemed one and the same instrument, and it will not be necessary in making proof of this Contract to produce or account for more than one counterpart.

43.7 City-Owned Property.

A. All City-Owned Property shall be the sole property of the City. With respect to any City-Owned Property in the custody, possession, or control of Contractor, Contractor shall:

- I. clearly mark or identify such City-Owned Property as City-Owned Property;
- II. maintain such City-Owned Property in first class condition;
- III. bear all risk of loss and damage with respect to such City-Owned Property, normal wear and tear excepted;
- IV. insure such City-Owned Property against all risks of loss or damage in an amount equal to the full replacement value with loss payable to the City, and Contractor shall forward proper evidence of such insurance to HPD upon request; and
- V. promptly deliver all City-Owned Property to HPD upon HPD's demand or at the conclusion of the Term of this Contract.

B. Contractor shall immediately notify HPD of

- I. any loss or damage to City-Owned Property while in the custody, possession, or control of Contractor; and
- II. any loss or damage to City-Owned Property of which Contractor has knowledge.

43.8 Anti-Trust. Contractor hereby assigns, sells, and transfers to the City all right, title, and interest in and to any claims and claims of action arising under the anti-trust laws of the State or of the United States relating to the particular goods or services purchased or procured by the City pursuant to this Contract.

43.9 General Release by Acceptance of Final Payment.

A. The acceptance by Contractor, any assignee of Contractor, or any other person claiming by or through Contractor, of any final payment under any Work Order issued under this Contract, whether such payment be made pursuant to a voucher, judgment of any court of competent jurisdiction, or any other administrative means, shall constitute and operate as a general release of the City from any and all claims, demands, and causes of action whatsoever which Contractor, its successors, legal representatives and assigns has or may have

against the City in connection with this Contract, excepting only a claim against the City for the amounts deducted or withheld in accordance with the terms and provisions of this Contract or by Law, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures brought under Article 14.

- B. The Contractor is warned that the execution by it of a release in connection with Contractor's acceptance of the final payment under any Work Order containing language purporting to reserve claims against the City other than those specifically exempted in Paragraph 43.9.A shall not be effective to reserve any such claims.
- C. Any refusal by Contractor to accept the final payment as tendered by HPD shall constitute a waiver by Contractor of all claims to interest thereon.
- D. Contractor, however, shall not be barred by this Article from commencing an action for breach of Contract to the extent permitted by Law and by the terms of the Contract for any claims that that have been filed in accordance with Article 14 or that arose after submission of any payment requisition, provided that a detailed and verified statement of claim is served upon the HPD and the Comptroller not later than forty (40) days after the making of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

43.10 Political Activity. There shall be no partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office as part of or in connection with this Contract, nor shall any of the funds provided under this Contract be utilized for such purposes.

43.11 Merger. This Contract contains all of the terms and conditions agreed upon by the parties. No other oral or written, express or implied promises, agreements, or understandings regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties, or to vary any of the terms set forth herein.

43.12 All Legal Provisions Deemed Included. Each and every provision of law required to be inserted in this Contract will be and is hereby deemed to be inserted herein. If, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith, upon the application of either party, be amended by such insertion so as to comply strictly with the law.

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

- 43.14 Remedies. In addition to the other remedies herein provided, HPD shall be entitled to restrain by injunction the violation or threatened violation of the obligations of Contractor under this Contract and to obtain specific performance by Contractor of its obligations under this Contract.
- 43.15 Successors And Assigns. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, their successors and assigns.
- 43.16 Compliance With Laws. Contractor shall comply, and shall cause all Subcontractors to comply, with the provisions of all Federal, State and local laws, rules, regulations, orders and ordinances applicable to this Contract and the Work.
- 43.17 Sole Discretion. Any determination to be made by HPD pursuant to this Contract shall be in the sole discretion of HPD and shall be final and binding upon Contractor.

**ARTICLE 44**  
**MINORITY-OWNED AND WOMEN-OWNED BUSINESS**  
**ENTERPRISES REQUIREMENTS (M/WBE)**

This Contract, if so required by the Agency as indicated in Attachment 1 to the Invitation to Bid, the Bid Information Summary Sheet, is subject to the Minority-Owned and Women-Owned Business Enterprises (“M/WBE”) requirements contained in Rider 3 attached hereto and made a part hereof, inclusive of Contractor’s M/WBE Utilization Plan incorporated therein as Schedule B.

**ARTICLE 45**  
**FEDERAL CONDITIONS**

This Contract is funded in whole or in part under a program providing direct financial assistance of the Federal Government to the City. This Contract is therefore subject to, and Contractor will comply with, the requirements of all applicable Federal laws and regulations, including, but not limited to, those set forth in Exhibit B annexed hereto and made a part hereof. Contractor shall cause Exhibit B to be annexed to and made a part of each Subcontract. In the event of any conflict or inconsistency between the provisions contained in the body of this Contract and the applicable Federal laws and regulations, the applicable Federal laws and regulations shall control.

**ARTICLE 46**  
**IRAN DIVESTMENT ACT COMPLIANCE RIDER**

Contractor shall comply with the terms set forth in the Iran Divestment Compliance Rider attached hereto and made a part hereof as Rider 1.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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

**CITY OF NEW YORK**

By the Department of Housing Preservation  
and Development

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

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

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

**CONTRACTOR**

\_\_\_\_\_

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

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

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

\_\_\_\_\_  
FED. EMPLOYER I.D. NO. OR SOC. SEC. NO.

## ACKNOWLEDGMENT BY CONTRACTOR

STATE OF NEW YORK )  
 )  
 ) ss:  
COUNTY OF NEW YORK )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person on behalf of which the individual(s) acted, executed the instrument.

NOTARY PUBLIC



**RIDER 1**

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

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

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

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

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

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

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

**IRAN DIVESTMENT ACT COMPLIANCE CERTIFICATION FORM**

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:

*[Please Check One]*

**BIDDER'S CERTIFICATION**

- ☐ By submission of this bid or proposal, each bidder/proposer and each person signing on behalf of any bidder/proposer certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each bidder/proposer is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.
- ☐ I am unable to certify that my name and the name of the bidder/proposer does not appear on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law. I have attached a signed statement setting forth in detail why I cannot so certify.

Dated: \_\_\_\_\_, New York  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

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

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

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

**RIDER 2**

**WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER**

- 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

**RIDER 3**

**MINORITY-OWNED AND WOMEN-OWNED BUSINESS  
ENTERPRISES REQUIREMENTS (M/WBE)**

## **NOTICE TO ALL PROSPECTIVE CONTRACTORS**

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

#### **ARTICLE I. M/WBE PROGRAM**

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

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

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

All provisions of Section 6-129 are hereby incorporated in the Contract by reference and all terms used herein that are not defined herein shall have the meanings given such terms in Section 6-129.

Article I, Part A, below, sets forth provisions related to the participation goals for construction, standard and professional services contracts.

Article I, Part B, below, sets forth miscellaneous provisions related to the M/WBE Program.

#### **PART A**

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

10. Pre-award waiver of the **Participation Goals**.

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

(b) To apply for a full or partial waiver of the **Participation Goals**, a bidder, proposer, or contractor, as applicable, must complete Part III (Page 5) of Schedule B and submit such request no later than seven (7) calendar days prior to the date and time the bids, proposals, or Task Orders are due, in writing to the Agency by email at **contracts@hpd.nyc.gov** or by hand delivery to 100 Gold Street, Section 6-M, New York, NY 10038. Bidders, proposers, or contractors, as applicable, who have submitted requests will receive an Agency response by no later than two (2) calendar days prior to the due date for bids, proposals, or Task Orders; provided, however, that if that date would fall on a weekend or holiday, an Agency response will be provided by close-of-business on the business day before such weekend or holiday date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PART B**

### **MISCELLANEOUS**

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

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

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

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

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

## **ARTICLE II. ENFORCEMENT**

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

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

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

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

4. If an **M/WBE** Utilization Plan has been submitted, and pursuant to this Article II, Section 3, the Contractor has been found to have failed to fulfill its **Participation Goals** contained in its **M/WBE** Utilization Plan or the **Participation Goals** as modified by Agency pursuant to Article I,

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

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

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

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

## Part 1: M/WBE Participation Goals

### Contract Overview (To be completed by contracting agency)

APT E-Pin# \_\_\_\_\_ FMS Project ID# \_\_\_\_\_  
 Project Title \_\_\_\_\_ Agency PIN# \_\_\_\_\_  
 Contracting Agency \_\_\_\_\_ Bid/Proposal Response Date \_\_\_\_\_  
 Agency Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Contact Person \_\_\_\_\_ Title \_\_\_\_\_  
 Telephone \_\_\_\_\_ Email \_\_\_\_\_

Project Description (attach additional pages if necessary)

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

### M/WBE Participation Goals for Services

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

**Prime Contract Industry:** \_\_\_\_\_

#### Category and Breakdown:

Unspecified \_\_\_\_\_ %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals** \_\_\_\_\_ %  
 Line 1

## Part 2: M/WBE Participation Plan

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

### Section 1: Prime Contractor Contact Information

Tax ID# \_\_\_\_\_ FMS Vendor ID# \_\_\_\_\_  
 Business Name \_\_\_\_\_ Contact Person \_\_\_\_\_  
 Business Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_  
 Telephone \_\_\_\_\_ Email \_\_\_\_\_

### Section 3: Contractor M/WBE Utilization Plan

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

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

### Section 2: M/WBE Utilization Goal Calculation

#### Prime Contractor Adopting Agency Participation Goals

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

Total Bid/Proposal Value \$ \_\_\_\_\_

**multiplied by x**

Total Participation Goals \_\_\_\_\_ %  
 (Line 1 above)

Calculated M/WBE  
 Participation Amount \$ \_\_\_\_\_  
 Line 2

**OR**

#### Prime Contractor With Partial Waiver Approval Adopting Revised Participation Goals

*For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting Revised M/WBE Participation Goals.*

Total Bid/Proposal Value \$ \_\_\_\_\_

**multiplied by x**

Total Revised  
 Participation Goals \_\_\_\_\_ %

Calculated M/WBE  
 Participation Amount \$ \_\_\_\_\_  
 Line 3



**Section 4: General Contract Information**

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

\_\_\_\_\_%

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

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

**Section 5: Vendor Certification and Required Affirmations**

I hereby:

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

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

# SCHEDULE B – Part 3

## Request for Waiver of M/WBE Participation Requirement

### Contract Overview

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

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

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

### Vendor Contract History

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

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

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

### Reference 1

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

#### Prime Contract description

Did the vendor perform as a Prime Contractor or as a Subcontractor? ☐ Prime Contractor ☐ Subcontractor

Was the Prime Contract subject to any Goals? ☐ City M/WBE Goals ☐ State Goals ☐ Federal Goals ☐ No Applicable Goals

Did the Prime Contractor meet Goal requirements? ☐ Yes ☐ No ☐ N/A

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

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

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

\_\_\_\_\_ \$ \_\_\_\_\_

### M/WBE Participation Goals for Services

#### Defined by AGENCY in bid/solicitation documents

Percent of the total contract value to be subcontracted to M/WBE vendors for services and/or credited to an M/WBE Qualified Joint Venture.

Unspecified \_\_\_\_\_ %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals** \_\_\_\_\_ %

#### Proposed by VENDOR seeking waiver

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

Unspecified \_\_\_\_\_ %  
 Black American \_\_\_\_\_ %  
 Hispanic American \_\_\_\_\_ %  
 Asian American \_\_\_\_\_ %  
 Women \_\_\_\_\_ %

**Total Participation Goals** \_\_\_\_\_ %

Agency/Organization_____	Contract #_____
Reference Contact_____	Telephone_____ Email_____
Contract Start Date_____	Contract End Date_____ Total Contract Value \$_____
Prime Contract description	

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

Agency/Organization_____	Contract #_____
Reference Contact_____	Telephone_____ Email_____
Contract Start Date_____	Contract End Date_____ Total Contract Value \$_____
Prime Contract description	

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

01/2020 Page 4 of 5 For information or assistance, please contact your contracting City Agency

#### Reference 4

Agency/Organization	Contract #
Reference Contact	Telephone
Contract Start Date	Contract End Date
Total Contract Value \$	
Prime Contract description	
Did the vendor perform as a Prime Contractor or as a Subcontractor?	
<input type="checkbox"/> Prime Contractor	<input type="checkbox"/> Subcontractor
Was the Prime Contract subject to any Goals?	<input type="checkbox"/> City M/WBE Goals
<input type="checkbox"/> State Goals	<input type="checkbox"/> Federal Goals
<input type="checkbox"/> No Applicable Goals	
Did the Prime Contractor meet Goal requirements?	<input type="checkbox"/> Yes
<input type="checkbox"/> No	<input type="checkbox"/> N/A
If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain	

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

#### Reference 5

Agency/Organization	Contract #	
Reference Contact	Telephone	
Contract Start Date	Contract End Date	
Total Contract Value \$		
Prime Contract description		
Did the vendor perform as a Prime Contractor or as a Subcontractor?		
<input type="checkbox"/> Prime Contractor	<input type="checkbox"/> Subcontractor	
Was the Prime Contract subject to any Goals?	<input type="checkbox"/> City M/WBE Goals	
<input type="checkbox"/> State Goals	<input type="checkbox"/> Federal Goals	
<input type="checkbox"/> No Applicable Goals		
Did the Prime Contractor meet Goal requirements?	<input type="checkbox"/> Yes	
<input type="checkbox"/> No	<input type="checkbox"/> N/A	
If the Prime Contractor did not meet Goal requirements or contract is still ongoing, please explain		
If you performed as the Prime Contractor, please provide a description and value of all work subcontracted to other vendors.		\$
		\$
		\$
		\$
		\$
		\$
Percentage of total contract value subcontracted to other vendors		%
If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.		
\$		

#### Vendor Certification

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

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

Signature	Date
Print Name	Title

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

**EXHIBIT A**  
**SCOPE OF WORK**

## SCOPE OF WORK

### 1. **GENERAL:**

- 1.1. **OVERVIEW:** Under the terms of this Contract, Contractor shall provide all material, labor, tools and equipment necessary to remove existing hinges on building, vestibule, hallway, stairway and/or apartment entrance doors in occupied residential buildings as directed by HPD, and replace them with correct and functional hinges to restore proper self-closing and latching operation. (***Note:** Replacement of doors and/or door frames will not be performed under this contract.*)

### 2. **BIDDER QUALIFICATION:**

- 2.1. To be considered for award, a bidder must demonstrate, to HPD's satisfaction, its capacity to conduct the work specified above at four (4) separate sites concurrently, with four (4) separate vehicles and four (4) separate crews of workers. Failure to do so may result in rejection of the bid as non-responsive.
- 2.2. At the time of contract award, the bidder must hold a then-current Home Improvement Contractor License issued by the New York City Department of Consumer Affairs.

### 3. **TIMEFRAMES FOR SERVICES:**

- 3.1. Points of contact for access to each site will be supplied to Contractor on the work order. Within twenty-four (24) hours of receipt of an emergency work order, Contractor shall initiate access arrangements with a tenant or other provided contact for the worksite at which hinges are to be replaced, in order to complete the work within three (3) business days of Contractor's receipt of a work order, unless prior approval for a later start date is received from HPD. Contractor shall also notify the Emergency Repair Program's Vendor Tracking Unit of all work start dates.
- 3.2. If Contractor encounters any difficulties in gaining access to the worksite, Contractor must notify HPD within one (1) business day at the phone number given on the work order by following the "No Access Procedures." HPD will then assist Contractor in gaining access to the worksite. If, after a total of at least two (2) attempts to gain access (including at least one attempt by HPD), Contractor and HPD are unable to gain access to the worksite, Contractor will be entitled to invoice for a No Access Fee of \$50.00, provided Contractor has followed the foregoing procedures.

### 4. **MATERIALS & INSTALLATION:**

- 4.1. As directed by work order ("Work Order"), Contractor shall replace hinges on specified building, vestibule, hallway, stairway and/or apartment entrance doors at the given building and work location, in order that such doors will self-close by means of at least two self-closing, spring-type hinges per door, in conformity to NYC Construction Code, Chapter 7, 715.4.8.2 and NFPA 80.
- 4.2. Where possible, the Work Order shall specify the quantity, size, corner type (square or radius) and configuration (self-closing and/or bearing-type) of hinges. Contractor shall complete the work based on actual field conditions and shall notify HPD of any variation from the Work Order. Unless otherwise instructed in the work order, Contractor shall replace all hinges on each door requiring service.

- 4.3. Contractor shall notify HPD in the event any building, vestibule, hallway, stairway and/or apartment entrance door specified in an Work Order for hinge replacement, or a component of the door, or the frame thereof, or a component of the frame, or other condition is determined by the Contractor to be of an incorrect type, incorrectly installed, or damaged beyond correct self-closing functioning.

4.4. **FASTENERS**

- A. Screws and other fasteners utilized shall be of the composition, size and type indicated by code and by manufacturer's specifications.
- B. Contractor shall ensure that all fasteners obtain proper purchase when properly tightened. In the event it is not possible to properly tighten and secure hinge fasteners, Contractor shall notify HPD.

4.5. **HINGES**

- A. Hinges provided and installed shall be constructed of steel. Hinges shall be the size and type specified in individual door and hardware manufacturer's published listings, or in accordance with NFPA 80, Chapter 6, Table 6.4.3.1.
- B. Self-closing, spring-type hinges shall be labeled and shall meet the requirements of ANSI/BHMA A156.17, Standards for Self-Closing Hinges & Pivots, Grade 1.
- C. Non-self-closing hinges shall be bearing-type.
- D. Hinges shall be installed and adjusted in such a manner that the door shall swing easily and freely, and that positive latching is achieved when the door is allowed to close freely from an open position of 30 degrees.

<b>Award</b>	<b>Primary Contractor</b>	<b>Secondary Contractor</b>
MN	Manhattan	The Bronx
BX	The Bronx	Manhattan
KQ	Brooklyn – 1-6 & 16; Queens	Brooklyn – 7-15, 17-18; Staten Island
KS	Brooklyn – 7-15, 17-18; Staten Island	Brooklyn – 1-6 & 16; Queens

5. **GEOGRAPHIC AREA OF RESPONSIBILITY:** Contractor shall act as Primary Contractor and Secondary Contractor, respectively, for the boroughs/CDs specified below, pursuant to the procedures set forth in Section 6 of this Scope of Work. Contractor shall perform all work, whether in the Primary or Secondary areas of responsibility, in accordance with all of the provisions of this Contract, and shall be paid for such work in accordance with the bid prices.

**6. ALTERNATIVE VENDOR PROCEDURE:** HPD recognizes that the size of the geographical area, the number of potential site(s) and the time is of the essence requirement could create short-term surges in demand that Contractor may be unable to handle in a timely manner as determined by HPD in its sole discretion. Additionally, other circumstances may arise in which no contract/contractor of preceding priority is available. HPD therefore implements the following Alternative Vendor Procedure.

- 6.1. Within one (1) hour of receipt by Contractor of HPD's first notice, Contractor may inform HPD by telephone at (212) 863-7764 or in writing delivered to the Director of the Bureau of Maintenance Procurement ("BMP") that Contractor is unable to perform the services requested in said first notice, due to prior obligations under this Contract (Contractor's "Notice of Non-Acceptance of Work"). If the Notice of Non-Acceptance of Work is given by Contractor by telephone, Contractor shall immediately follow this telephone notice with a written or faxed notice, addressed as set forth above, identifying the work order, stating that Contractor is unable to perform the services required and enumerating all other work currently being performed by Contractor for HPD.
- 6.2. Upon timely receipt of a Notice of Non-Acceptance of Work from the Primary Contractor, or when HPD otherwise determines that the Primary Contractor cannot handle the work or that no contract/contractor of preceding priority is available, HPD may give notice to the Secondary Contractor. The Secondary Contractor may return a Notice of Non-Acceptance of Work in accordance with Section 6.1, above.
- 6.3. Upon timely receipt of a Notice of Non-Acceptance of Work from the Secondary Contractor, or when HPD otherwise determines that the Secondary Contractor cannot handle the work or that no contract/contractor of succeeding priority is available, HPD may, in its sole discretion, issue a Final Demand Notice to the Primary Contractor, as set forth in Section 7 of this Scope of Work.

**7. FAILURE TO PERFORM:** In the event that HPD exhausts its rights under the Alternative Vendor Procedure, is unable to provide the necessary performance, and determines in its sole discretion that an emergency situation exists, HPD shall notify Primary Contractor by telephone or in writing of a final demand for performance (the "Final Demand Notice"). Primary Contractor's failure to commence performance of the work within twenty-four (24) hours of receipt of a Final Demand Notice shall immediately subject Primary Contractor to either or both of the following:

- 7.1. The accrual of liquidated damages in accordance with Article 20 of this Contract.
- 7.2. The exercise of default provisions as set forth in Article 17 of this Contract.



**ATTACHMENT A**  
**NO ACCESS PROCEDURES**

## **NO ACCESS PROCEDURES**

Dear Contractor:

This letter is to formally notify you of procedures to be followed in the event you have “No Access” to the job site to make an evaluation for a bid request or to perform an awarded job. If you cannot gain access to:

1. Any Occupied or Vacant City-Owned (“K” OMOs) or Privately-Owned (“E” OMOs) Buildings (Except Commercial Units)
  - a) Contractor must first call the designated Vendor Tracking Person for the appropriate site office informing him/her about the details. (See attached list of Phone #s/fax #s/email address and names). You MUST also follow up with a fax copy of “No Access Notification” slip to the Vendor Tracking Person (see Attached).
  - b) If you cannot reach the Vendor Tracking Person or they did not respond to your request you must speak to the respective Area Director at the site office (See Attached List).
  - c) If you still have not received a response, you must notify the Procurement Specialist in the Bureau of Maintenance and Procurement who invited you to bid, and whose name is listed on Invitation to Bid Sheet. The Procurement Specialist will in turn coordinate access with appropriate staff.
2. Commercial Units
  - a) Please contact Jim Edgeworth, Urban Renewal and Property Management Services, at 212-694-3977 for further information.
3. Vacant Lots
  - a) Please contact Chester Ricketts, Urban Renewal and Property Management Services for Vacant Lots and other properties, at 212 863-8890 for further information.
4. ‘K’ Open Market Orders (OMO) for HPSC (boiler) Jobs (See OMO)
  - a) In addition to step 1(a), fax another copy of the No Access Notification slip to Procurement Specialist and call to confirm receipt.

If you have any questions regarding the above, please contact Barbara Schechter at 212-863-7815.



## NO ACCESS NOTIFICATION

'K' OMOs for HPSC (Boiler) for Manhattan, Bronx fax to: 212 410-4938 or 212 423-5055

K' OMOs for HPSC (Boiler) for Brooklyn, Queens, Staten Island fax to: 718 623-9910 or 5845

ALL other OMOs follow phone/fax/email address written on OMO or see attached contact list.

DATE: \_\_\_\_\_

FROM: \_\_\_\_\_

Print Company Name

PHONE #: \_\_\_\_\_ CELL #: \_\_\_\_\_

NO ACCESS  
JOB ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
Borough

LOCATION(s): \_\_\_\_\_

OMO #: \_\_\_\_\_ DATE ACCESS NEEDED BY: \_\_\_\_\_

COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



## SITE OFFICE NO ACCESS CONTACTS

**'K' OMOs that are HSPC (boiler) for Manhattan/Bronx fax to: 212 410-4938 or 212 423-5055**  
**All other 'K' OMOs contact the Brooklyn, Queens, Staten Island Area Office.**

**'E' OMOs for Manhattan, Bronx, contact the individuals below:**

<b>AREA OFFICE FOR EMERGENCY REPAIR</b> 105 East 106 <sup>th</sup> Street 5 <sup>th</sup> Floor New York, NY 10029			
		<b>Fax #:</b> 212 423-5055	
<b>Manhattan, Bronx</b>		<b>Telephone</b>	<b>Fax</b>
1. Mr. Mehta	Supervisor	212 863-5531	212 423-5051 212 410-4938 212 423-5055
2. Ms. Shen	Vendor Tracking	212 863-5547	
3. Ms. Betance	Vendor Tracking	212 863-5431	
4. Ms. Khadan	Vendor Tracking	212 863-5558	
5. Ms. Dennis	Vendor Tracking	212 863-5478	
6. Ms. Neal-Terry	Vendor Tracking	212 863-5533	

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**'K' OMOs that are HSPC (boiler) for Brooklyn, Queens, Staten Island fax to: 718 623-9910**

**'K' OMOs that are HSPC (boiler) for Manhattan, Bronx fax to: 212 410-4938 or 212 423-5055**

**OMOs starting with 'E' & 'K' for Manhattan, Bronx, Brooklyn, Queens, Staten Island, contact the individuals below:**

<b>AREA OFFICE FOR EMERGENCY REPAIR</b> 516 Bergen Street, 2 <sup>nd</sup> Floor Brooklyn, NY 11217-2490			
<b>Brooklyn, Queens, Staten Island</b>		<b>Telephone</b>	<b>Fax</b>
1. Mr. Nettles	Supervisor	212 863-6124	718 623-9910
2. Mr. Sutchen	Heat Coordinator	212 863-6046	
3. Mr. Catania	'K' OMOs Heat Coordinator	212 863-6115	
4. Ms. Ram	Vendor Tracking	212 863-6175	
5. Ms. Lopez	Vendor Tracking	212 863-6231	
6. Ms. Joseph	Vendor Tracking	212 863-6161	
7. Mr. Lesure	Vendor Tracking	212 863-6135	



**ALL Alternative Enforcement Program (AEP) Open Market Orders (OMO) contact the individuals below:**

<b>Special Enforcement Alternative Enforcement Program (AEP)</b> 100 Gold Street, 5 <sup>th</sup> Floor, Section M New York, NY 10038 <b>Manhattan, Bronx, Brooklyn, Queens, Staten Island</b>		
	<b>Telephone</b>	<b>Fax</b>
Ms. Grace DeFina	212 863-8713	212 863-8617
Mr. Nick Demarco	212 863-8711	
Mr. Frederick Clarke	212 863-8798	
Mr. Gerard Salmon	212 863-5262	
Mr. Hector Osorio Jr.	212 863-7769	

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**DO NOT USE  
NO ACCESS NOTIFICATION FORM**

**ALL OMOs starting with 'D' contact the following individuals by EMAIL or FAX and by PHONE:   Note:** The message must include company name and cell #, building address, OMO # and detailed description of problem.

<b>Division of Operations And Support Services Demolition</b> 100 Gold Street, 6 <sup>th</sup> Floor, Section G New York, NY 10038			<b>FAX #: 212 863-8886</b>
<b>Manhattan, Bronx, Brooklyn, Queens, Staten Island</b>	<b>Telephone</b>	<b>Cell</b>	
Eugene McArdle, Director Field Administration <b>email:</b> <a href="mailto:demolition@hpd.nyc.gov">demolition@hpd.nyc.gov</a>	212 863-7870	917 559-4303	
Michael Murphy, Deputy Director <b>email:</b> <a href="mailto:demolition@hpd.nyc.gov">demolition@hpd.nyc.gov</a>	212 863-7076	917 975-0808	



**EXHIBIT B**

**FEDERAL CONDITIONS  
(UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR  
FEDERALLY FUNDED PROCUREMENT CONTRACTS AND CDBG RIDER)**

**UNIFORM FEDERAL CONTRACT PROVISIONS RIDER  
FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS**  
(Version 02.16.2018)

*[Instructions to Agencies: This Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts (“Rider”) must be attached to all federally funded procurement contracts (of any dollar amount) that are subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). This Rider does not apply to subrecipient or subaward agreements. Procurement contracts funded by the U.S. Department of Housing and Urban Development CDBG Program or CDBG-DR Program must also include the CDBG or CDBG-DR Rider, as applicable.]*

**A. Definitions.** As used in this Rider:

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

**B. Termination and Remedies for Breach of Contract.** The following provisions concerning remedies for breach of contract and termination apply to Contracts between the City and the City’s Contractor.

- (1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the City may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the City may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would

have been payable under the Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the City may be charged against and deducted out of monies earned by the Contractor.

- (2) **Termination.** The City shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:

- a. **Termination for Cause.** The City shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the City to be necessary, the City shall effect termination according to the following procedure:
  - i. *Notice to Cure.* The City shall give written notice of the conditions of default signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Contract pending the outcome of the default proceedings pursuant to this section.
  - ii. *Opportunity to be Heard.* If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Contractor must be given an opportunity to be heard upon not less than five (5) business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.
  - iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination (“Notice of Termination”), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.
  - iv. *Grounds for Default.* The City shall have the right to declare the Contractor in default:



1. Upon a breach by the Contractor of a material term or condition of this Contract, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Contract when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

- v. *Basis of Settlement.* The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in its Notice of Termination. The City shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.
- b. **Termination for Convenience.** The City shall have the right to terminate the Contract for convenience, by providing written notice (“Notice of Termination”) according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.
- c. **Termination due to Force Majeure**
  - i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Force Majeure Events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
  - ii. In the event the Contractor cannot comply with the terms of the Contract (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.
  - iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

d. **Termination due to Reductions in Federal Funding**

- i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.
- ii. In the case of the reduction option referred to in subparagraph (i), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the City shall not be bound to utilize any of the Contractor's suggestions and that the City shall have sole discretion as to how to effectuate the reductions.
- iii. If the City reduces funding pursuant to this paragraph (c), the basis of settlement shall be as provided for in subparagraph (iv) of paragraph (a) of subdivision (2) of this section (B), above.

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

- (1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.
- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution control Act (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-Sfill.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.

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 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.* The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract for three years after final payment under the Contract is made and all other pending matters are closed.
- (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.*
  - a. Pursuant to 2 CFR § 200.315(d), the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.
  - b. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright

protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Contract without the prior written permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.

- c. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- d. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.
- e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- f. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

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

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

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, 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 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) (A) **Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR § 6-1.4(b).

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

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

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

**E. Rights to Inventions. [Special Provisions For Contracts Involving Experimental, Developmental, or Research Work.]**

(1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (A), (B), and (C), unless the Contract specifically states that this provision is superseded:

*a. Definitions.* The following definitions apply to this section (D).

- i. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*).
- ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.
- iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

- v. “Small Business Firm” means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
  - vi. “Nonprofit Organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- b. *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- c. *Invention Disclosure, Election of Title and Filing of Patent Application by Contractor.*
- i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
  - ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where publication, on sale or public use has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.
  - iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid

patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application or six months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

- iv. Requests for extension of the time for disclosure, election, and filing under subparagraphs (1), (2), and (3) may be granted at the discretion of the Federal Agency.

d. *Conditions When the Government May Obtain Title*

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

- i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c), above, or elects not to retain title; provided that the Federal Agency may only request title within 60 calendar days after learning of the failure of the Contractor to disclose or elect within the specified times.
- ii. In those countries in which the Contractor fails to file patent applications within the times specified in (c) above; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) above, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.
- iii. In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

e. *Minimum Rights to Contractor and Protection of the Contractor Right to File*

- i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.
- ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical

areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

- iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty calendar days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Contractor Action to Protect the Government's Interest

- i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by (c)(1), above. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- iii. The Contractor will notify the Federal Agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than thirty calendar days before the expiration of the response period required by the relevant patent office.
- iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."



## g. Subcontracts

- i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.

h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

i. *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. *March-in Rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

- i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

- ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
  - iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
  - iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor is a nonprofit organization, it agrees that:
  - i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
  - ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
  - iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
  - iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Secretary may review the Contractor's licensing program and decisions regarding Small Business Firm applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary when the Secretary's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv).
- l. *Communication.* The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the City upon request.

**FEDERAL EXHIBIT 1****NOTICE TO BIDDERS****NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.**

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

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

**Goals and Timetables for Women**

From April 1, 1980 until the present .....6.9

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

## Federal Labor Standards Provisions

U.S. Department of Housing  
and Urban Development  
Office of Labor Relations**Applicability**

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

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii)** (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and Basic Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially

responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form W H-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.html> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise

employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the

ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act Requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, 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 the contract clauses in this paragraph.

7. **Contract Termination; Debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. **Disputes Concerning Labor Standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, USC, "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement knowing the same to be false...shall be fined not more than \$5, 000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(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 the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, 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 subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.



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**(3) Withholding for Unpaid Wages and Liquidated Damages.**

HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

**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 the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

# **CDBG Rider**

(Version 02.16.2018)

## **INSTRUCTIONS TO NYC AGENCIES AND OFFICES**

This CDBG Rider contains supplementary general conditions for use with procurement contracts and subrecipient agreements that are funded in whole or in part by the U.S. Department of Housing and Urban Development (“HUD”) under Title I of the Housing and Community Development Act of 1974 (Pub. L. 93-383) as amended. For all procurement contracts and subrecipient agreements funded by the Community Development Block Grant (“CDBG”) Program, *except those funded by the CDBG Disaster Recovery (“CDBG-DR”) Program*, this CDBG Rider must be included as an attachment, expressly made a part of, and incorporated by reference. A different rider with terms specific to the CDBG-DR Program should be attached to CDBG-DR funded procurement contracts and subrecipient agreements.

If this rider is attached to a subrecipient agreement, the agency or office must ensure that the subrecipient agreement includes the information specific to the subaward required in 2 CFR § 200.331.

## **TABLE OF CONTENTS**

Article 1.	Definitions.....	3
Article 2.	Housing And Community Development Act And National Environmental Policy Act.....	4
Article 3.	Labor Requirements.....	4
Article 4.	Additional Federal Conditions For Construction For Subrecipients .....	6
Article 5.	Federal Non-Discrimination Laws.....	13
Article 6.	Environmental Protection; Energy Efficiency; Historic Preservation; Flood Protection; Lead-Based Paint .....	14
Article 7.	Uniform Relocation Assistance .....	15
Article 8.	Uniform Administrative Requirements (Including Procurement Standards), Cost Principles, And Audit Requirements For Federal Awards .....	15
Article 9.	Unearned Payments; Income; Documentation Of Costs; Accounting System; Fidelity Bonds; Disbursement Restrictions.....	15
Article 10.	Records And Audits.....	16
Article 11.	Subcontractors.....	17
Article 12.	Conflicts; Exhibits .....	18
Article 13.	Reversion Of Assets.....	18
Article 14.	Small Firms, M/Wbe Firms, And Labor Surplus Area Firms.....	18
Article 15.	Intangible Property.....	19
Article 16.	Hatch Act; Lobbying; Conflicts Of Interest.....	20
Article 17.	Suspension And Termination.....	21

## **ARTICLE 1. DEFINITIONS**

As used in this CDBG 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 entity, or entities, executing this Agreement on behalf of the City of New York.
- (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” and/or “Subrecipient” means the entity or entities executing this Agreement, other than the Agency.
- (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 which equals or exceeds \$250.
- (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.
- (m) “Subcontractor” means any person, firm or corporation, other than employees of the Contractor or the Subrecipient, or another Subcontractor who is engaged by the Contractor or the Subrecipient to furnish (i) services, (ii) labor or (iii) services and/or labor and materials at the site of the work performed under this Agreement.

**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 or Subrecipient. In this regard, the Agency is under no obligation to make any payments to the Contractor or Subrecipient, and shall not make any such payment, and the Contractor or Subrecipient 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 or Subrecipient has been notified of such instructions by the Agency. Furthermore, the Contractor or Subrecipient and the City mutually agree that the Contractor or Subrecipient 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 or Subrecipient for any costs incurred in violation of this provision.

**ARTICLE 3. LABOR REQUIREMENTS**

***[Applicable to Contractors and Subrecipients; 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 or Subrecipient 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 or Subrecipient agrees to send to each labor organization or representative of workers with which the Contractor or Subrecipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's or Subrecipient'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 or Subrecipient 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 or Subrecipient will not subcontract with any Subcontractor where the Contractor or Subrecipient has notice or knowledge that the Subcontractor has been found in violation of the regulations in 24 CFR Part 135.
5. The Contractor or Subrecipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor or Subrecipient 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 or Subrecipient'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 or Subrecipient 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 and the Subrecipient shall cause its contractors to 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 and the Subrecipient shall cause its contractor to 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. ADDITIONAL FEDERAL CONDITIONS FOR CONSTRUCTION FOR SUBRECIPIENTS**

*[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section D(1)(c)-(d), (2), and (3).]*

- (a) If this Agreement involves Construction work, design for Construction, or Construction services, all such work or services performed by the Subrecipient and its Subcontractors shall be subject to the following requirements:
1. **Impermissible Salary Deductions.** In Construction contracts of any amount, the Subrecipient shall cause its Subcontractor to comply with 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.
  2. **Federal Labor Standards.** In Construction contracts of any amount, the Subrecipient shall cause its Subcontractors to comply with the more detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2.
  3. **Equal Employment Opportunity.** In Construction contracts or subcontracts in excess of \$10,000, the Subrecipient shall cause its Subcontractors to comply with Executive Order 11246, as amended by Executive Order 11375, and as

supplemented in Department of Labor regulations (41 CFR chapter 60). Subrecipient shall include the following Specifications, which are required pursuant to 41 CFR § 60-4.3 in all federally assisted contracts and 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. (Federal Notice Required by 41 CFR § 60-4.3)**

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 Agreement 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 Agreement 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).

**Equal Opportunity Clause:** Subrecipient shall include the following provisions, which are required by 41 CFR § 60-1.4(b), in all federally assisted contracts and subcontracts.

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

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

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

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

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

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by HUD 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 HUD 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 HUD, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **ARTICLE 5. FEDERAL NON-DISCRIMINATION LAWS**

### ***[Applicable to Contractors and Subrecipients]***

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 or Subrecipient 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 or Subrecipient 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.

- (h) Subrecipients shall comply with all civil-rights related requirements, pursuant to 24 CFR § 570.503(b)(5).

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

***[Applicable to Contractors and Subrecipients]***

- (a) For agreements, subcontracts, and subgrants of amounts in excess of \$150,000, the Contractor or Subrecipient 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 Subrecipient and 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).
- (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**

### ***[Applicable to Contractors and Subrecipients]***

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 section 570.606.

## **ARTICLE 8. UNIFORM ADMINISTRATIVE REQUIREMENTS (INCLUDING PROCUREMENT STANDARDS), COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS**

### ***[Subdivision (a) is applicable to Contractors and Subrecipients; subdivision (b) is applicable to Subrecipients only; subdivision (c) is applicable to Contractors only]***

- (a) Pursuant to 2 CFR § 2400.101 and 24 CFR § 85.1, Subrecipients and Contractors are 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.
- (b) For the procurement of all subcontracts and goods contracts, Subrecipients are required to follow the procurement standards in 2 CFR §§ 200.318-200.326, except as allowed by 2 CFR § 200.110.
- (c) Contractors are subject to the Uniform Federal Contract Provisions Rider, attached to this Agreement.

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

### ***[Paragraphs (a), (b), (d), and (e) are applicable to Contractors and Subrecipients; paragraph (d) is applicable to Subrecipients only]***

- (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 or Subrecipient will be returned to the City. All interest on funds advanced to the Contractor or Subrecipient will be returned to the City.



- (b) The Contractor or Subrecipient agrees that if any income is generated from the Community Development Block Grant Program funded activities, Contractor or Subrecipient 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, including 24 CFR § 570.503(b)(3), which provides that, at the end of the program year, the City may require remittance of all or part of any program income balances (including investments thereof) held by the Subrecipient (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump sum drawdown, or cash or investments held for section 108 security needs).
- (c) 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.
- (d) The Subrecipient shall submit to the Agency a detailed description of its accounting, reporting and internal control systems, including but not limited to the procedures for cash receipts, cash disbursements, payrolls, personnel policies, fixed petty cash controls and other systems which are necessary under the circumstances. The Agency shall evaluate and document all systems and only upon acceptance and approval of the accounting, reporting and internal control systems by the Agency, shall funds be disbursed to the Subrecipient, other provisions of the Agreement notwithstanding.
- (e) If required by the Federal awarding agency or elsewhere in this Agreement, the Agency must receive a statement from the Contractor's or Subrecipient'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 or Subrecipient 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 or Subrecipient until it has received assurance that adequate coverage has subsequently been obtained.
- (f) No money under this Agreement shall be disbursed by the Agency to any Contractor or Subrecipient except pursuant to a written contract which incorporates the applicable Supplementary General Conditions and unless the Contractor or Subrecipient 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**

### ***[Applicable to Contractors and Subrecipients]***

- (a) The Subrecipient shall maintain records in accordance with requirements prescribed by or in 2 CFR § 200.333, HUD and/or the City with respect to all matters covered by this Agreement and retained for at least three years after the City makes final payments and all other pending matters concerning this Agreement are closed, subject to the exceptions

in 2 CFR § 200.333. (ii) 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) Annual Data Collection Report forms for the purpose of including specific Program description, accomplishment, expenditure and beneficiary information in the City's Annual Performance Report.
  - (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 Agency, HUD, Inspector General, U.S. General Accounting Office, and/or the Comptroller General of the United States may deem necessary, the Contractor or Subrecipient 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**

### ***[Applicable to Contractors and Subrecipients]***

- (a) The provisions of this Agreement shall apply to Subcontractors and their officers, agents and employees in all respects as if they were employees of the Contractor or Subrecipient. The Contractor or Subrecipient 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 or Subrecipient.
- (b) Employees of the Subcontractor shall be subject to the same provisions as employees of the Contractor or Subrecipient.
- (c) The services furnished by Subcontractors shall be subject to the provisions hereof as if furnished directly by the Contractor or Subrecipient, and the Contractor or Subrecipient shall remain responsible therefor.

## **ARTICLE 12. CONFLICTS; EXHIBITS**

### ***[Applicable to Contractors and Subrecipients]***

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

## **ARTICLE 13. REVERSION OF ASSETS**

### ***[Applicable to Subrecipients]***

- (a) At the Agreement's expiration, the Subrecipient shall transfer to the City all CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.
- (b) Any real property under the Subrecipient's control that was acquired or improved in whole or in part with Community Development funds in excess of \$25,000 must be used to either (i) meet the national objectives in Section 570.208 for a period of five years after acquisition if the property or completion of the improvements, as applicable, or (ii) disposed in a manner which results in the Program being reimbursed in the amount of the current fair market value of the property less any portion thereof attributable to expenditures of non-CDBG funds for acquisition of, or improvements to, the property.
- (c) Title to all Equipment in excess of \$250 purchased pursuant to this Agreement with CDBG funds or furnished by the City shall vest in the City and the same shall be conspicuously labeled as such.

## **ARTICLE 14. SMALL FIRMS, M/WBE FIRMS, AND LABOR SURPLUS AREA FIRMS**

### ***[Applicable to Subrecipients. Contractors must follow section C(11) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.]***

Subrecipient 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.

## **ARTICLE 15. INTANGIBLE PROPERTY**

*[Applicable to Subrecipients. A similar provision for Contractors is included in the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts at section C(12).]*

- (a) Pursuant to 2 CFR § 200.315(d), the federal 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 Subrecipient purchases ownership with grant support.
- (b) Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Agreement (“Copyrightable Materials”), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Subrecipient 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 Subrecipient shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Subrecipient for no purpose other than in the performance of this Agreement without the prior written permission of the City. The City may grant the Subrecipient a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.
- (c) The Subrecipient 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 Subrecipient shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- (d) The Subrecipient 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 Subrecipient has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies of which shall be provided to the City upon execution of this Contract.
- (e) The Subrecipient 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 and the Contractor shall promptly and fully report to the Government to make a determination as

to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

- (f) If the Subrecipient 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.

## **ARTICLE 16. HATCH ACT; LOBBYING; CONFLICTS OF INTEREST**

### ***[Applicable to Subrecipients.]***

- (a) Hatch Act: The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- (b) Lobbying: The Subrecipient certifies, to the best of its knowledge and belief, that:
1. 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;
  2. 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
  3. It will require that the language of this Article 16(b) be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-subrecipients shall certify and disclose accordingly.
  4. 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.
- (c) Conflict of Interest: The Subrecipient agrees to abide by the provisions of 2 CFR §§ 200.112 and 200.318(c) and 24 CFR § 570.611.

**ARTICLE 17.           SUSPENSION AND TERMINATION**

***[Applicable to Subrecipients.]***

- (a)**     The City may take enforcement action against a Subrecipient for non-compliance, as described in 2 CFR §§ 200.338 and 200.339(a)(1) & (2), including suspension or termination.
  
- (b)**     The City may terminate for convenience pursuant to 2 CFR § 200.339(a)(3).

**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 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 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

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

Goals and Timetables for Women

From April 1, 1980 until the present .....6.9

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



**FEDERAL EXHIBIT 2**

## Federal Labor Standards Provisions

U.S. Department of Housing  
and Urban Development  
Office of Labor Relations**Applicability**

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

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii)** (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and Basic Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially

responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form W H-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.html> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise

employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the

ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal Employment Opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act Requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, 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 the contract clauses in this paragraph.

7. **Contract Termination; Debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

9. **Disputes Concerning Labor Standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) **Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 USC 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, USC, "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of...influencing in any way the action of such Administration...makes, utters or publishes any statement knowing the same to be false...shall be fined not more than \$5, 000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(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 the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, 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 subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

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**(3) Withholding for Unpaid Wages and Liquidated Damages.**

HUD or its designee 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 contract, 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 subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph 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 subparagraphs (1) through (4) of this paragraph.

**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 the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**EXHIBIT C**

**PAYMENT AND PERFORMANCE BONDS**

## PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS, That we,

---

---

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hereinafter referred to as the "Principal" and

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

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\$\_\_\_\_\_.

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

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with the City for:

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a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full.



## **PAYMENT BOND**

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns and other Subcontractors to whom Work under this Contract is sublet and his or their successors and assigns shall promptly pay or cause to be paid all lawful claims for:

- a. Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the Work under said Contract, and any amendment or extension thereof or addition thereto, whether such persons be agents, servants or employees of the Principal or of any such Subcontractors, including all persons so engaged who perform the work of laborers or mechanics at or in the vicinity of the site of the Project regardless of any Contractual relationship between the Principal or such Subcontractors, or his or their successors or assigns, on the one hand and such laborers or mechanics on the other, but not including office employees not regularly stationed at the site of the Project, and
- b. Materials and supplies (whether incorporated in the permanent (construction or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any Subcontractors at or in the vicinity of the site of the Project in the prosecution of the Work under said Contract and any amendment or extension thereof or addition thereto; then this obligation shall be null and void; otherwise to remain in full force and effect. This bond is subject to the following additional conditions, limitations and agreements:
- c. The Principal and Surety (Sureties) agree that this bond shall be for the benefit of any materialman or laborer having a just claim, as well as the City itself.
- d. All persons who have performed labor, rendered services or furnished materials and supplies, as aforesaid, shall have a direct right of action against the Principal and his, its or their successors and assigns, and the Surety (Sureties) herein, or against either or both or any of them and their successors and assigns. Such persons may sue in their own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other person as party plaintiff.
- e. The Principal and Surety (Sureties) agree that neither of them will hold the City liable for any judgment for costs or otherwise, obtained against either or both of them by a laborer or materialman in a suit brought by either a laborer or materialman under this bond for moneys allegedly due for performing work or furnishing material.
- f. The Surety (Sureties) or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workmen's Compensation Law.
- g. In no event shall the Surety (Sureties), or its successors or assigns, be liable for a greater sum than the penalty of this bond or be subject to any suit, action or proceeding hereon that is instituted by any person, firm, or corporation hereunder later than two years after the complete performance of said Contract and final settlement thereof.

## **PAYMENT BOND**

The Principal, for himself/herself and his successors and assigns, and the Surety (Sureties), for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of the City to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought hereon by any person, firm or corporation, including Subcontractors, MATERIALMAN and third persons, for work, labor, services, supplies or material performed, rendered, or furnished as aforesaid upon the ground that there is no law authorizing the City to require the foregoing provisions to be placed in this bond.

And the Surety (Sureties) for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any Work to be performed, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, Subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

## PAYMENT BOND

IN WITNESS WHEREOF, the Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

BOND PREMIUM RATE: \_\_\_\_\_

BOND PREMIUM COST: \_\_\_\_\_

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners. If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact. There should be executed an appropriate member of counterparts of the bond corresponding to the number of counterparts of the Contract.

**PAYMENT BOND**

**ACKNOWLEDGMENT OF PRINCIPAL - IF A CORPORATION**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me personally  
came \_\_\_\_\_

to me known, who, affirms or 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; that he/she knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he/she signed his name thereto by like order.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**ACKNOWLEDGMENT OF PRINCIPAL - IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, before me  
personally appeared \_\_\_\_\_ to me known, and known to  
me to be one of the members of the firm of: \_\_\_\_\_

described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same as and for the act and deed of said firm.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**PAYMENT BOND**

**ACKNOWLEDGMENT OF PRINCIPAL - IF AN INDIVIDUAL**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ before me  
personally appeared \_\_\_\_\_

to me known, and known to me to be the person described in and who executed the foregoing  
instrument and acknowledged that he/she executed the same.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

Each executed bond should be accompanied by:

- a. appropriate acknowledgments of the respective parties;
- b. appropriate duly certified copy of Power of Attorney or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety;
- c. a duly certified extract from By-Laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued; and
- d. duly certified copy of latest published financial statement of assets and liabilities of Surety.

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**AFFIX ACKNOWLEDGMENTS AND JUSTIFICATIONS OF SURETIES**

Performance Bond \$5 Million or Less (SBA Approved)

**PERFORMANCE BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**,

That we, \_\_\_\_\_

hereinafter referred to as the "Principal",

and, \_\_\_\_\_

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns in the penal sum of \_\_\_\_\_

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

**WHEREAS**, The Principal is about to enter, or has entered, into a Contract in writing with the City for \_\_\_\_\_

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

**NOW, THEREFORE**, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of the Principal's default of the Contract, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal's default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

**Performance Bond \$5 Million or Less (SBA Approved)**

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the City that the City has determined that the Principal is in default of the Contract, to (1) pay the City the cost to complete the contract as determined by the City in excess of the balance of the Contract held by the City, plus any damages or costs to which the City is entitled, up to the full amount of the above penal sum, (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof, or (3) tender a completion contractor that is acceptable to the City. The Surety (Sureties) further agrees, at its option, either to notify the City that it elects to pay the city the cost of completion plus any applicable damages and costs under option (1) above, or to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and, if the Surety elects to fully perform and complete the Work, then to complete all Work within the time set forth in the Contract or such other time as agreed to between the City and Surety in accordance with the Contract. If the Surety elects to tender payment pursuant to (1) above, then the Surety shall tender such amount within fifteen (15) business days notification from the City of the cost of completion. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to pay the City the cost of completion, to commence and complete all Work as provided herein, or to tender a completion contractor.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, and waivers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to subcontractors shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal. Notwithstanding the above, if the City makes payments to the Principal before the time required by the contract that in the aggregate exceed \$100,000 or 10% of the Contract price, whichever is less, and that have not become earned prior to the Principal being found to be in default, then all payments made to the Principal before the time required by the Contract shall be added to the remaining contract value available to be paid for the completion of the Contract as if such sums had not been paid to the Principal, but shall not provide a basis for non-performance of its obligation to pay the City the cost of completion, to commence and to complete all Work as provided herein, or to tender a completion contractor

Performance Bond \$5 Million or Less (SBA Approved)

**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

Bond Premium Rate \_\_\_\_\_.

Bond Premium Cost \_\_\_\_\_.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.



Performance Bond \$5 Million or Less (SBA Approved)

**ACKNOWLEDGMENT OF PRINCIPAL - 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 PRINCIPAL - IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally came \_\_\_\_\_

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

Performance Bond \$5 Million or Less (SBA Approved)

**ACKNOWLEDGMENT OF PRINCIPAL - 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

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATIONS OF SURETIES

Performance Bond Greater Than \$5 Million

**PERFORMANCE BOND**

**KNOW ALL PEOPLE BY THESE PRESENTS:**,

That we, \_\_\_\_\_

hereinafter referred to as the "Principal",

and, \_\_\_\_\_

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns in the penal sum of \_\_\_\_\_

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

**WHEREAS**, The Principal is about to enter, or has entered, into a Contract in writing with the City for \_\_\_\_\_

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full;

**NOW, THEREFORE**, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of the Principal's default of the Contract, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay any person or corporation by reason of any damages arising or growing out of the Principal's default of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

## Performance Bond Greater Than \$5 Million

The Surety (Sureties), for value received, hereby stipulates and agrees, upon written notice from the City that the City has determined that the Principal is in default of the Contract, to either (1) pay the full amount of the above penal sum in complete discharge and exoneration of this bond and of all the liabilities of the Surety relating to this bond, or (2) fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof. The Surety (Sureties) further agrees, at its option, either to tender the penal sum or to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and to complete all Work within the time set forth in the Contract or such other time as agreed to between the City and Surety in accordance with the Contract. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to commence and to complete all Work as provided herein.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any Work to be performed or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

Performance Bond Greater Than \$5 Million

**IN WITNESS WHEREOF**, The Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

SEAL. \_\_\_\_\_ (L.S.)  
Principal

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

Bond Premium Rate \_\_\_\_\_.

Bond Premium Cost \_\_\_\_\_.

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

Performance Bond Greater Than \$5 Million

**ACKNOWLEDGMENT OF PRINCIPAL - 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 PRINCIPAL - IF A PARTNERSHIP**

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, before me personally came \_\_\_\_\_

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

Performance Bond Greater Than \$5 Million

**ACKNOWLEDGMENT OF PRINCIPAL - 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

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATIONS OF SURETIES

**EXHIBIT D**  
**PREVAILING WAGE**



**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

**LABOR LAW ARTICLE 9  
REAL PROPERTY TAX LAW §421-A  
NYC ADMINISTRATIVE CODE §6-130**

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**PREVAILING WAGE FOR BUILDING SERVICE EMPLOYEES ON NYC CONTRACTS PURSUANT  
TO LABOR LAW ARTICLE 9**

Building service employees on public contracts must receive not less than the prevailing rate of wage and supplements for the classification of work performed. In accordance with Labor Law Article 9 the Comptroller of the City of New York has promulgated this schedule of prevailing wages and supplemental benefits for building service employees engaged on New York City public building service contracts in excess of \$1,500.00. Prevailing rates are required to be annexed to and form part of the contract pursuant to §231 (4).

This schedule is a compilation of separate determinations of the prevailing rate of wage and supplements made by the Comptroller for each trade classification listed herein pursuant to New York State Labor Law section 234 (1). The source of the wage and supplement rates, whether a collective bargaining agreement, survey data or other, is listed at the end of each classification.

Agency Chief Contracting Officers should contact the Bureau of Labor Law's Classification Unit with any questions concerning trade classifications, prevailing rates or prevailing practices with respect to procurement on New York City building service contracts. Contractors are advised to review the Comptroller's Prevailing Wage Schedule before bidding on building service contracts. Contractors with questions concerning trade classifications, prevailing rates or prevailing practices with respect to building service contracts in the procurement stage must contact the contracting agency responsible for the procurement.

Any error as to compensation under the prevailing wage law or other information as to trade classification, made by the contracting agency in the contract documents or in any other communication, will not preclude a finding against the contractor of prevailing wage violation.

Any questions concerning trade classifications, prevailing rates or prevailing practices on New York City building service contracts that have already been awarded may be directed to the Bureau of Labor Law's Classification Unit by calling (212) 669-4443. All callers must have the agency name and contract registration number available when calling with questions on building service contracts. Please direct all other compliance issues to: Bureau of Labor Law, Attn: Wasyl Kinach, P.E., Office of the Comptroller, 1 Centre Street, Room 651, New York, N.Y. 10007; Fax (212) 669-4002.

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**PREVAILING WAGE FOR BUILDING SERVICE EMPLOYEES IN BUILDINGS WITH TAX  
EXEMPTION BENEFITS PURSUANT TO REAL PROPERTY TAX LAW §421-A**

Covered Landlords shall ensure that all building service employees performing work in buildings with 50 or more dwelling units for which construction was commenced after December 27, 2007, that receive tax exemption benefits under Real Property Tax Law §421-a(8) (or 30 or more dwelling units in buildings that receive tax exemption benefits under Real Property Tax Law §421-a(16) or (17)), are paid no less than the prevailing wage rates listed in this schedule, unless the New York City Department of

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

Housing Preservation and Development determines that, at initial occupancy, at least 50 percent of the dwelling units are affordable to individuals or families with a gross household income at or below 125 percent of the area median income and that any such units which are located in rental buildings will be subject to restrictions to insure that they will remain affordable for the entire period during which they receive benefits under Real Property Tax Law §421-a.

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**PREVAILING WAGE FOR BUILDING SERVICE EMPLOYEES IN NEW YORK CITY LEASED OR FINANCIALLY ASSISTED FACILITIES PURSUANT TO NYC ADMINISTRATIVE CODE § 6-130**

Covered landlords & covered financial assistance recipients shall ensure that all building service employees performing building service work at the premises to which a lease or financial assistance pertains are paid no less than the prevailing wage listed in this Schedule.

**Covered Landlords include:**

Anyone leasing commercial office space or commercial office facilities of 10,000 square feet or more to New York City agencies that lease or rent no less than 51% of the total square footage of the building to which the lease applies (no less than 80% in Staten Island or in an area not defined as an exclusion area pursuant to section 421-a of the real property tax law on the date of enactment of the local law).

**Covered Financial Assistance Recipients include:**

Businesses with annual gross revenues of five million dollars or more who have received financial assistance from the City of New York (as defined in New York City Administrative Code §6-130) with a total value of one million dollars or more. Business Improvement Districts and employers with manufacturing operations at the premises to which the financial assistance pertains are not covered. Not-for-profit organizations are not covered unless they have received financial assistance in relation to a residential development project.

The information is intended to assist you in meeting your prevailing wage obligation. You should consult New York City Administrative Code §6-130 to determine whether you are covered by this prevailing wage law. New York City Administrative Code § 6-130 requires the City to maintain an updated list of covered landlords and financial assistance recipients who are subject to the prevailing wage requirement.

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Labor Law § 231 (6) and NYC Administrative Law §6-130 requires contractors to post on the site of the work a current copy of this schedule of wages and supplements.

This schedule is applicable to work performed during the effective period, unless otherwise noted. Changes to this schedule are published on our web site [comptroller.nyc.gov/wages](http://comptroller.nyc.gov/wages). Contractors must pay the wages and supplements in effect when the building service employee performs the work. Preliminary schedules for future one-year periods appear in the City Record on or about June 1 each succeeding year. Final schedules appear on or about July 1 in the City Record and on our web site [comptroller.nyc.gov/wages](http://comptroller.nyc.gov/wages).

Contractors are solely responsible for maintaining original payroll records delineating, among other things, the hours worked by each employee within a given classification.

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

Some of the rates in this schedule are based on collective bargaining agreements. The Comptroller's Office has attempted to include all overtime, shift and night differential, Holiday, Saturday, Sunday or other premium time work. However, this schedule does not set forth every prevailing practice with respect to such rates with which employers must comply. All such practices are nevertheless part of the employer's prevailing wage obligation and contained in the collective bargaining agreements of the prevailing wage unions. These collective bargaining agreements are available for inspection by appointment. Requests for appointments may be made by calling (212) 669-4443, Monday through Friday between the hours of 9 a.m. and 5 p.m.

In order to meet their obligation to provide prevailing supplemental benefits to each covered employee, employers must either:

- 1) Provide bona fide fringe benefits which cost the employer no less than the prevailing supplemental benefits rate; or
- 2) Supplement the employee's hourly wage by an amount no less than the prevailing supplemental benefits rate; or
- 3) Provide a combination of bona fide fringe benefits and wage supplements which cost the employer no less than the prevailing supplemental benefits rate in total.

Although prevailing wage laws do not require employers to provide bona fide fringe benefits (as opposed to wage supplements) to their employees, other laws may. For example, the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq., the Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 et seq., and the New York City Paid Sick Leave Law, N.Y.C. Admin. Code § 20-911 et seq., require certain employers to provide certain benefits to their employees. Labor agreements to which employers are a party may also require certain benefits. The Comptroller's Office does not enforce these laws or agreements.

**Employers must provide prevailing supplemental benefits at the straight time rate for each hour worked unless otherwise noted in the classification.**

**Paid Holidays, Vacation and Sick Leave when listed must be paid or provided in addition to the prevailing hourly supplemental benefit rate.**

For more information, please refer to the Comptroller's Prevailing Wage Law Regulations in Title 44 of the Rules of the City of New York, Chapter 2, available at [comptroller.nyc.gov/wages](http://comptroller.nyc.gov/wages).

**Wasył Kinach, P.E.  
Director of Classifications  
Bureau of Labor Law**

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**



**The City of New York  
Office of the Comptroller  
Bureau Of Labor Law  
1 Centre Street  
New York, NY 10007**

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**Scott M. Stringer  
Comptroller**

**If you are a Covered Building Service Employee and you have been paid less than the Prevailing Wage and Benefits, please contact us at 212-669-4443 or download our complaint form from our website at [comptroller.nyc.gov/wages](http://comptroller.nyc.gov/wages).**

**Si es un empleado de servicios a edificios elegible y recibió menos del sueldo prevalente y beneficios, por favor contáctenos en 212-669-4443 o descarga un formulario de reclamo del sitio del Internet [comptroller.nyc.gov/wages](http://comptroller.nyc.gov/wages).**

**Wasył Kinach, P.E.  
Director of Classifications  
Bureau of Labor Law**

## **ADDENDUM**

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### **List of Amended Classifications – 1/13/2020**

1. BUILDING CLEANER AND MAINTAINER (OFFICE)
2. BUILDING CLEANER AND MAINTAINER (RESIDENTIAL)
3. BUILDING HVAC SERVICES OPERATOR
4. FUEL OIL
5. SECURITY GUARD (ARMED)
6. SECURITY GUARD (UNARMED)

### **List of Amended Classifications – 3/31/2020**

1. BUILDING CLEANER AND MAINTAINER (OFFICE)
2. BUILDING CLEANER AND MAINTAINER (RESIDENTIAL)
3. SECURITY GUARD (ARMED)
4. SECURITY GUARD (UNARMED)
5. WINDOW CLEANER

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

## **TABLE OF CONTENTS**

<b><u>CLASSIFICATION</u></b>	<b><u>PAGE</u></b>
BUILDING CLEANER AND MAINTAINER (OFFICE) .....	7
BUILDING CLEANER AND MAINTAINER (RESIDENTIAL) .....	11
BUILDING HVAC SERVICES OPERATOR .....	13
CLEANER (PARKING GARAGE) .....	14
FUEL OIL .....	15
LANDSCAPING AND GROUNDSKEEPING WORKER.....	17
LOCKSMITH .....	17
MAINTENANCE WORKER, MACHINERY .....	18
MEDICAL WASTE REMOVAL .....	18
MOVER - OFFICE FURNITURE AND EQUIPMENT .....	19
REFUSE REMOVER .....	20
SECURITY GUARD (ARMED).....	21
SECURITY GUARD (UNARMED) .....	22
WINDOW CLEANER .....	24

## **BUILDING CLEANER AND MAINTAINER (OFFICE)**

### **Office Building Class "A" Handyperson (Over 280,000 square feet gross area)**

(Includes all building service employees that, by training and experience, possess a certain amount of mechanical or technical skill and devote more than fifty (50) percent of their working time in a building to work involving such skills.)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$29.07**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$29.77**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

### **Office Building Class "A" Foreperson, Starter (Over 280,000 square feet gross area)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$28.96**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$29.66**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

### **Office Building Class "A" Cleaner/Porter, Elevator Operator, Exterminator, Fire Safety Director (Over 280,000 square feet gross area)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$26.60**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$9.69; for new hire 13-24 months of employment - \$12.56

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$27.25**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$10.03; for new hire 13-24 months of employment - \$13.00

**NEW HIRE:** Cleaner/Porter, Elevator Operator, Exterminator, Fire Safety Director may be paid 75% of the wage rate above for the first 21 months of employment, 85% of the wage rate above for the 22nd through 42nd months of employment, and upon the completion of 42 months of employment employee shall be paid the full wage rate.

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

**Office Building Class "B" Handyperson (Over 120,000 and less than 280,000 square feet gross area)**

(Includes all building service employees that, by training and experience, possess a certain amount of mechanical or technical skill and devote more than fifty (50) percent of their working time in a building to work involving such skills.)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$29.04**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$29.74**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

**Office Building Class "B" Foreperson, Starter (Over 120,000 and less than 280,000 square feet gross area)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$28.93**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$29.63**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

**Office Building Class "B" Cleaner/Porter, Elevator Operator, Exterminator, Fire Safety Director (Over 120,000 and less than 280,000 square feet gross area)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$26.57**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$9.69; for new hire 13-24 months of employment - \$12.56

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$27.22**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$10.03; for new hire 13-24 months of employment - \$13.00

NEW HIRE: Cleaner/Porter, Elevator Operator, Exterminator, Fire Safety Director may be paid 75% of the wage rate above for the first 21 months of employment, 85% of the wage rate above for the 22nd through 42nd months of employment, and upon the completion of 42 months of employment employee shall be paid the full wage rate.



OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

**Office Building Class "C" Handyperson (Less than 120,000 square feet gross area)**

(Includes all building service employees that, by training and experience, possess a certain amount of mechanical or technical skill and devote more than fifty (50) percent of their working time in a building to work involving such skills.)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$29.00**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$29.70**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

**Office Building Class "C" Foreperson, Starter (Less than 120,000 square feet gross area)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$28.89**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$29.59**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

**Office Building Class "C" Cleaner/Porter, Elevator Operator, Exterminator, Fire Safety Director (Less than 120,000 square feet gross area)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$26.52**

Supplemental Benefit Rate per Hour: **\$12.89**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$9.69; for new hire 13-24 months of employment - \$12.56

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$27.17**

Supplemental Benefit Rate per Hour: **\$13.33**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$10.03; for new hire 13-24 months of employment - \$13.00

NEW HIRE: Cleaner/Porter, Elevator Operator, Exterminator, Fire Safety Director may be paid 75% of the wage rate above for the first 21 months of employment, 85% of the wage rate above for the 22nd through 42nd months of employment, and upon the completion of 42 months of employment employee shall be paid the full wage rate.

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

**For all BUILDING CLEANER AND MAINTAINER (OFFICE) titles:**

**New Hire:** Shall be defined as an employee who has not worked any hours during the previous six-month period.

**Vacation Relief Employee:** Employees hired to replace vacationing employees only, may be paid 60% of wage and no benefits for up to 5 months.

**Months of Employment:** Shall be defined as an Employee's total length of service with the Employer or at the Facility, whichever is greater.

The paid holidays, vacation and sick leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.

## **Overtime Description**

Supplemental Benefits shall be paid for each hour paid, up to forty (40) paid hours per week.

## **Overtime**

Time and one half the regular rate after an 8 hour day.

Time and one half the regular rate for Saturday.

Time and one half the regular rate for Sunday.

Time and one half the regular rate for work on a holiday plus the day's pay.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

## **Paid Holidays**

New Year's Day

President's Day

Good Friday

Memorial Day

Independence Day

Labor Day

Columbus Day

Thanksgiving Day

Day after Thanksgiving

Christmas Day

## **Vacation**

Less than 6 months of work.....no vacation

6 months of work.....three (3) days

1 year of work.....ten (10) days

5 years of work.....fifteen (15) days

15 years of work.....twenty (20) days

21 years of work.....twenty-one (21) days

22 years of work.....twenty-two (22) days

23 years of work.....twenty-three (23) days

24 years of work.....twenty-four (24) days

25 years or more of work.....twenty-five (25) days

Plus two Personal Days per year.

**Sick Leave:**

10 sick days per year.

Unused sick leave paid in the succeeding January, one full day pay for each unused sick day.

If, pursuant to U.S. Centers for Disease Control and Prevention, NYS Department of Health, and/or NYC Department of Health and Mental Hygiene guidelines, an Employer directs an employee or employees to self-quarantine or self-isolate because of a worksite exposure to COVID-19, such employee will be paid two (2) weeks of paid leave without reduction of any such affected employee's existing paid leave entitlements.

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

(Local #32 B/J)

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## **BUILDING CLEANER AND MAINTAINER (RESIDENTIAL)**

### **Residential Building Handyperson**

(Includes all building service employees that, by training and experience, possess a certain amount of mechanical or technical skill and devote more than fifty (50) percent of their working time in a building to work involving such skills.)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$27.43**

Supplemental Benefit Rate per Hour: **\$12.81**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 1/13/2020 - 4/20/2020

Wage Rate per Hour: **\$27.43**

Supplemental Benefit Rate per Hour: **\$13.25**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

Effective Period: 4/21/2020 - 6/30/2020

Wage Rate per Hour: **\$28.23**

Supplemental Benefit Rate per Hour: **\$13.25**

Supplemental Note: for new hire 0-3 months of employment - \$0.00

### **Residential Building Cleaner/Porter, Doorperson, Elevator Operator**

(Includes all building service employees that keep buildings in clean and orderly condition, provide services to assist tenants such as with elevators, mail, keys and opening doors, and screen and announce visitors.)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$24.90**

Supplemental Benefit Rate per Hour: **\$12.81**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$9.69; for new hire 13-24 months of employment - \$12.56

Effective Period: 1/13/2020 - 4/20/2020

Wage Rate per Hour: **\$24.90**

Supplemental Benefit Rate per Hour: **\$13.25**

Supplemental Note: for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$10.03; for new hire 13-24 months of employment - \$13.00

Effective Period: 4/21/2020 - 6/30/2020

Wage Rate per Hour: **\$25.65**

Supplemental Benefit Rate per Hour: **\$13.25**

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

**Supplemental Note:** for new hire 0-3 months of employment - \$0.00; for new hire 4-12 months of employment - \$10.03; for new hire 13-24 months of employment - \$13.00

**NEW HIRE - Cleaner/Porter, Doorperson, Elevator Operator:** 0-21 months may be paid 75% of the hourly wage rate published above, 22-42 months may be paid 85% of the hourly wage rate published above. Upon completion of 42 months of employment, the new hire shall be paid the full wage rate. Upon completion of two years of employment the new hire receives the full supplemental benefit rate.

**For all BUILDING CLEANER AND MAINTAINER (RESIDENTIAL) titles:**

**New Hire:** Shall be defined as an employee who has not worked any hours during the previous six-month period.

**Vacation Relief Employee:** Employees hired to replace vacationing employees only, may be paid 60% of wage and no benefits for up to 5 months.

**Months of Employment:** Shall be defined as an Employee's total length of service with the Employer or at the Facility, whichever is greater.

The paid holidays, vacation and sick leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.

## **Overtime Description**

Supplemental Benefits shall be paid for each hour paid, up to forty (40) paid hours per week.

## **Overtime**

Time and one half the regular rate after an 8 hour day.

Time and one half the regular rate for work on a holiday plus the day's pay.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

## **Paid Holidays**

New Year's Day

Martin Luther King Jr. Day

President's Day

Memorial Day

Independence Day

Labor Day

Columbus Day

Election Day

Thanksgiving Day

Christmas Day

## **Vacation**

6 months.....three (3) days

1 year.....ten (10) days

5 years.....fifteen (15) days

15 years.....twenty (20) days

21 years.....twenty-one (21) days

22 years.....twenty-two (22) days

23 years.....twenty-three (23) days

24 years.....twenty-four (24) days

25 years.....twenty-five (25) days

Plus two Personal Days per year.

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

**SICK LEAVE**

After 1 year of service.....ten (10) days per year

If, pursuant to U.S. Centers for Disease Control and Prevention, NYS Department of Health, and/or NYC Department of Health and Mental Hygiene guidelines, an Employer directs an employee or employees to self-quarantine or self-isolate because of a worksite exposure to COVID-19, such employee will be paid two (2) weeks of paid leave without reduction of any such affected employee's existing paid leave entitlements.

(Local #32 B/J)

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## **BUILDING HVAC SERVICES OPERATOR**

### **Engineer (Refrigeration)**

Effective Period: 7/1/2019 - 12/31/2019

Wage Rate per Hour: **\$42.57**

Supplemental Benefit Rate per Hour: **\$19.54**

Effective Period: 1/1/2020 - 6/30/2020

Wage Rate per Hour: **\$43.85**

Supplemental Benefit Rate per Hour: **\$20.55**

**NEW HIRE - Engineer (Refrigeration):** for the first two years of employment may be paid a starting rate of 90% of the hourly wage rate published above.

### **Fireperson**

**Fireperson (Helper):** Assist the Engineer

Effective Period: 7/1/2019 - 12/31/2019

Wage Rate per Hour: **\$33.16**

Supplemental Benefit Rate per Hour: **\$19.10**

Effective Period: 1/1/2020 - 6/30/2020

Wage Rate per Hour: **\$34.15**

Supplemental Benefit Rate per Hour: **\$20.10**

Please note that the NYC Comptroller's Office does not publish rates for the Stationary Engineer title.

**For all BUILDING HVAC SERVICES OPERATOR titles:**

Supplemental Benefits shall be paid for each hour paid (excluding paid sick days).

Months of employment shall be defined as an Employee's length of service with the Employer or at the Facility, whichever is greater.

The paid holidays and vacation leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

## Overtime Description

All hours worked on a holiday shall be paid at two and one half times the regular wage rate in lieu of the paid day off.

## Overtime

Time and one half the regular rate after an 8 hour day.

Time and one half the regular rate for Saturday.

Time and one half the regular rate for Sunday.

## Paid Holidays

New Year's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

Plus six (6) floating Holidays

## Vacation

6 months ..... three (3) days

1 year ..... ten (10) days

5 years ..... fifteen (15) days

15 years ..... twenty (20) days

21 years..... twenty-one (21) days

22 years ..... twenty-two (22) days

23 years ..... twenty-three (23) days

24 years ..... twenty-four (24) days

25 years ..... twenty-five (25) days

(Local #94)

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## CLEANER (PARKING GARAGE)

### Garage Cleaner

Effective Period: 7/1/2019 - 12/30/2019

For Large Employers (11 or more employees)

Wage Rate per Hour: \$15.00

Supplemental Benefit Rate per Hour: \$0.68

For Small Employers (10 or less employees)

Wage Rate per Hour: \$13.50

Supplemental Benefit Rate per Hour: \$2.18

Effective Period: 12/31/2019 - 6/30/2020

Wage Rate per Hour: \$15.00

Supplemental Benefit Rate per Hour: \$0.68

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

## Overtime

Time and one half the regular rate after an 8 hour day.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

(Based on data from NYS Department of Labor Occupational Employment Statistics and US Department of Labor Bureau of Labor Statistics and Minimum Wage Law)

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## FUEL OIL

### Fuel Oil, Coal, Fuel Gas, Petroleum Product Chauffeur (5th Year and above)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$34.96**

Supplemental Benefit Rate per Hour: **\$23.64**

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$35.96**

Supplemental Benefit Rate per Hour: **\$24.42**

### Fuel Oil, Coal, Fuel Gas, Petroleum Product Chauffeur (4th Year)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$32.35**

Supplemental Benefit Rate per Hour: **\$23.64**

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$33.35**

Supplemental Benefit Rate per Hour: **\$24.42**

### Fuel Oil, Coal, Fuel Gas, Petroleum Product Chauffeur (3rd Year)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$30.35**

Supplemental Benefit Rate per Hour: **\$23.64**

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$31.35**

Supplemental Benefit Rate per Hour: **\$24.42**

### Fuel Oil, Coal, Fuel Gas, Petroleum Product Chauffeur (2nd Year)

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$28.35**

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

**Supplemental Benefit Rate per Hour: \$23.64**

**Effective Period: 1/13/2020 - 6/30/2020**

**Wage Rate per Hour: \$29.35**

**Supplemental Benefit Rate per Hour: \$24.42**

**Fuel Oil, Coal, Fuel Gas, Petroleum Product Chauffeur (1st Year)**

**Effective Period: 7/1/2019 - 1/12/2020**

**Wage Rate per Hour: \$26.35**

**Supplemental Benefit Rate per Hour: \$23.64**

**Effective Period: 1/13/2020 - 6/30/2020**

**Wage Rate per Hour: \$27.35**

**Supplemental Benefit Rate per Hour: \$24.42**

**For all FUEL OIL titles:**

**The paid holidays, vacation and sick leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.**

**Overtime**

**Time and one half the regular rate after an 8 hour day.**

**Time and one half the regular rate for Saturday.**

**Double time the regular rate for Sunday.**

**Overtime Holidays**

**Double time the regular rate for work on the following holiday(s).**

**Martin Luther King Jr. Day**

**Lincoln's Birthday**

**Washington's Birthday**

**Memorial Day**

**Independence Day**

**Labor Day**

**Columbus Day**

**Election Day**

**Veteran's Day**

**Triple time the regular rate for work on the following holiday(s).**

**New Year's Day**

**Thanksgiving Day**

**Christmas Day**

**Paid Holidays**

**New Year's Day**

**Martin Luther King Jr. Day**

**Lincoln's Birthday**

**Washington's Birthday**

**Memorial Day**

**Independence Day**



OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

Labor Day  
Columbus Day  
Election Day  
Veteran's Day  
Thanksgiving Day  
Christmas Day

### **Vacation**

Less than 75 days worked.....no vacation.  
75 days worked, but less than 110 days worked in a calendar year.....five (5) days the following year.  
110 days or more worked in a calendar year.....ten (10) days the following year.

### **SICK LEAVE:**

1 day sick leave earned for each 40 days worked in the preceding calendar year for a maximum of five (5) days per calendar year.

(Local #553)

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## **LANDSCAPING AND GROUNDSKEEPING WORKER**

### **Landscaper / Groundskeeper**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$19.57**

Supplemental Benefit Rate per Hour: **\$2.18**

### **Overtime**

Time and one half the regular rate after an 8 hour day.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

(Based on data from NYS Department of Labor Occupational Employment Statistics and US Department of Labor Bureau of Labor Statistics)

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## **LOCKSMITH**

### **Locksmith**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$30.44**

Supplemental Benefit Rate per Hour: **\$6.35**

### **Overtime**

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

Time and one half the regular rate after an 8 hour day.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

(Based on data from NYS Department of Labor Occupational Employment Statistics and US Department of Labor Bureau of Labor Statistics)

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## **MAINTENANCE WORKER, MACHINERY**

### **Mechanic**

Performs routine machinery maintenance and minor repairs.

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$34.08**

Supplemental Benefit Rate per Hour: **\$6.35**

### **Mechanic Helper**

Lubricates machinery, cleans and changes parts, assists Mechanics.

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$20.72**

Supplemental Benefit Rate per Hour: **\$6.35**

### **Overtime**

Time and one half the regular rate after an 8 hour day.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

(Based on data from NYS Department of Labor Occupational Employment Statistics and US Department of Labor Bureau of Labor Statistics)

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## **MEDICAL WASTE REMOVAL**

### **Driver**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$23.02**

Supplemental Benefit Rate per Hour: **\$12.53**

### **Helper**

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: \$19.27

Supplemental Benefit Rate per Hour: \$12.53

### **Tractor Trailer Driver**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: \$25.52

Supplemental Benefit Rate per Hour: \$12.53

### **Overtime Description**

Time and one half the regular hourly rate after an 8 hour day or after 40 straight time hours in any work week. The seventh day of work in a workweek is paid at double time the regular hourly rate. Time and one half the regular hourly rate for work on a holiday plus days pay for below paid holidays.

For all MEDICAL WASTE REMOVAL titles:

The paid holidays and vacation leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.

### **Paid Holidays**

President's Day

Memorial Day

Independence Day

Labor Day

Thanksgiving Day

Christmas Day

### **Vacation**

1 year of service but less than five years.....	ten (10) days
5 years of service but less than ten years.....	fifteen (15) days
10 years of service.....	sixteen (16) days
11 years.....	seventeen (17) days
12 years.....	eighteen (18) days
13 years.....	nineteen (19) days
14 years.....	twenty (20) days
20 years.....	twenty-one (21) days
21 years.....	twenty-two (22) days
22 years.....	twenty-three (23) days
23 years.....	twenty-four (24) days
24 years.....	twenty-five (25) days

Plus 2 Personal Days

(Local #813)

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## **MOVER - OFFICE FURNITURE AND EQUIPMENT**

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

**Heavy and Tractor Trailer Truck Driver**

Tractor-trailer combination or a truck with a capacity of at least 26,000 pounds Gross Vehicle Weight (GVW)

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$28.03**

Supplemental Benefit Rate per Hour: **\$5.60**

**Light Truck Driver**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$20.03**

Supplemental Benefit Rate per Hour: **\$5.60**

**Laborer and Freight, Stock, and Material Mover, Hand**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$18.03**

Supplemental Benefit Rate per Hour: **\$5.60**

**Packer and Packager, Hand**

Packs, wraps and labels office furniture and equipment and loads it onto dollies and into elevators.

Effective Period: 7/1/2019 - 12/30/2019

For Large Employers (11 or more employees)

Wage Rate per Hour: **\$15.00**

Supplemental Benefit Rate per Hour: **\$4.73**

For Small Employers (10 or less employees)

Wage Rate per Hour: **\$14.13**

Supplemental Benefit Rate per Hour: **\$5.60**

Effective Period: 12/31/2019 - 6/30/2020

Wage Rate per Hour: **\$15.00**

Supplemental Benefit Rate per Hour: **\$4.73**

**Overtime**

Time and one half the regular rate after an 8 hour day.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

(Based on data from NYS Department of Labor Occupational Employment Statistics and US Department of Labor Bureau of Labor Statistics and Minimum Wage Law)

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**REFUSE REMOVER**

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

## **Refuse Remover**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$30.34**

Supplemental Benefit Rate per Hour: **\$5.60**

### **Overtime**

Time and one half the regular rate after an 8 hour day.

Time and one half the regular hourly rate after 40 straight time hours in any work week.

(Based on data from NYS Department of Labor Occupational Employment Statistics and US Department of Labor Bureau of Labor Statistics)

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## **SECURITY GUARD (ARMED)**

### **Security Guard (Armed)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$29.50**

Supplemental Benefit Rate per Hour: **\$6.14**

Supplemental Note: for new employee 0-120 days of employment - \$5.59; for new employee 121 days - 2 years of employment - \$5.70

Effective Period: 1/13/2020 - 6/30/2020

Wage Rate per Hour: **\$29.50**

Supplemental Benefit Rate per Hour: **\$6.49**

Supplemental Note: for new employee 0-120 days of employment - \$5.94; for new employee 121 days - 2 years of employment - \$6.05

### **Overtime Description**

If President's Day is not observed, then the employer may substitute another holiday not listed below. If an employer observes a holiday not listed they may substitute said holiday with one on the list.

A guard is eligible for Paid Holidays after one year of continuous employment.

A guard who works a holiday is paid the regular rate plus receives the paid holiday.

For all Security Guard (Armed) titles:

Supplemental Benefits shall be paid for each hour paid, up to forty (40) paid hours per week.

Months of employment shall be defined as an Employee's length of service with the Employer or at the Facility, whichever is greater.

The paid holidays, vacation and sick leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.

### **Overtime**

Time and one half the regular rate after an 8 hour day.

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

Time and one half the regular hourly rate after 40 straight time hours in any work week.

## **Paid Holidays**

New Year's Day  
Martin Luther King Jr. Day  
President's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Day  
Personal Day

## **Vacation**

Months on payroll	Vacation with Pay
6	3 days
12	1 week
24	2 weeks
60	3 weeks
180	4 weeks
300	5 weeks

### **Sick Leave**

0 - 120 days of employment, employees will accumulate one (1) hour for every thirty (30) hours worked  
121 days - 36 months of employment, employees will receive five (5) paid sick days  
36 months or more of employment, employees will receive six (6) paid sick days

If, pursuant to U.S. Centers for Disease Control and Prevention, NYS Department of Health, and/or NYC Department of Health and Mental Hygiene guidelines, an Employer directs an employee or employees to self-quarantine or self-isolate because of a worksite exposure to COVID-19, such employee will be paid two (2) weeks of paid leave without reduction of any such affected employee's existing paid leave entitlements.

(Local #32B/J)

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## **SECURITY GUARD (UNARMED)**

(Security Guards in residential buildings are limited to monitoring and patrolling the interior and exterior of the building premises for the purpose of protecting the safety and property of the building, its residents, visitors and employees.)

### **Security Guard (Unarmed) 0 - 36 months - (Hired on or after 1/1/2016)**

Effective Period: 7/1/2019 - 1/12/2020

Wage Rate per Hour: **\$15.50**

Supplemental Benefit Rate per Hour: **\$6.14**

Supplemental Note: for new employee 0-120 days of employment - \$5.59, for new employee 121 days – 2 years of employment - \$5.70

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

**Effective Period: 1/13/2020 - 6/30/2020**

**Wage Rate per Hour: \$15.50**

**Supplemental Benefit Rate per Hour: \$6.49**

**Supplemental Note: for new employee 0-120 days of employment - \$5.94, for new employee 121 days – 2 years of employment - \$6.05**

### **Security Guard (Unarmed)**

**(Includes Security Guard (Unarmed) 31 months or more - Hired before 1/1/2016 and Security Guard (Unarmed) over 36 months – Hired on or after 1/1/2016.)**

**Effective Period: 7/1/2019 - 1/12/2020**

**Wage Rate per Hour: \$18.00**

**Supplemental Benefit Rate per Hour: \$6.14**

**Effective Period: 1/13/2020 - 6/30/2020**

**Wage Rate per Hour: \$18.00**

**Supplemental Benefit Rate per Hour: \$6.49**

### **Overtime Description**

**If President's Day is not observed, then the employer may substitute another holiday not listed below. If an employer observes a holiday not listed they may substitute said holiday with one on the list.**

**A guard is eligible for Paid Holidays after one year of continuous employment.**

**A guard who works a holiday is paid the regular rate plus receives the paid holiday.**

**For all Security Guard (Unarmed) titles:**

**Supplemental Benefits shall be paid for each hour paid, up to forty (40) paid hours per week.**

**Months of employment shall be defined as an Employee's length of service with the Employer or at the Facility, whichever is greater.**

**The paid holidays, vacation and sick leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.**

### **Overtime**

**Time and one half the regular rate after an 8 hour day.**

**Time and one half the regular hourly rate after 40 straight time hours in any work week.**

### **Paid Holidays**

**New Year's Day**

**Martin Luther King Jr. Day**

**President's Day**

**Memorial Day**

**Independence Day**

**Labor Day**

**Thanksgiving Day**

**Christmas Day**

**Personal Day**

### **Vacation**

**Months on payroll**

**6**

**Vacation with Pay**

**3 days**

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

12	1 week
24	2 weeks
60	3 weeks
180	4 weeks
300	5 weeks

**Sick Leave**

0 - 120 days of employment, employees will accumulate one (1) hour for every thirty (30) hours worked

121 days - 36 months of employment, employees will receive five (5) paid sick days

36 months or more of employment, employees will receive six (6) paid sick days

If, pursuant to U.S. Centers for Disease Control and Prevention, NYS Department of Health, and/or NYC Department of Health and Mental Hygiene guidelines, an Employer directs an employee or employees to self-quarantine or self-isolate because of a worksite exposure to COVID-19, such employee will be paid two (2) weeks of paid leave without reduction of any such affected employee's existing paid leave entitlements.

(Local #32B/J)

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## **WINDOW CLEANER**

### **Window Cleaner**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$30.07**

Supplemental Benefit Rate per Hour: **\$12.90**

### **Power Operated Scaffolds, Manual Scaffolds, and Boatswain Chairs**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$32.82**

Supplemental Benefit Rate per Hour: **\$12.90**

### **Window Cleaner Apprentice (0 - 3 months)**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$22.25**

Supplemental Benefit Rate per Hour: None

### **Window Cleaner Apprentice (4 - 7 months)**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$24.06**

Supplemental Benefit Rate per Hour: **\$12.90**

### **Window Cleaner Apprentice (8 - 11 months)**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$25.50**



OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE

Supplemental Benefit Rate per Hour: **\$12.90**

**Window Cleaner Apprentice (12 - 15 months)**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$26.97**

Supplemental Benefit Rate per Hour: **\$12.90**

**Window Cleaner Apprentice (16 - 17 months)**

Effective Period: 7/1/2019 - 6/30/2020

Wage Rate per Hour: **\$28.42**

Supplemental Benefit Rate per Hour: **\$12.90**

For all WINDOW CLEANER titles:

Months of employment shall be defined as an Employee's length of service with the Employer or at the Facility, whichever is greater.

The paid holidays, vacation and sick leave listed below must be paid or provided in addition to the hourly supplemental benefit rate.

**Overtime**

Time and one half the regular rate after an 8 hour day.

Time and one half the regular rate for Saturday.

Double time the regular rate for Sunday.

Time and one half the regular rate for work on a holiday plus the day's pay.

**Paid Holidays**

New Year's Day

Martin Luther King Jr. Day

President's Day

Good Friday

Memorial Day

Independence Day

Labor Day

Columbus Day

Thanksgiving Day

Day after Thanksgiving

Christmas Day

Personal Day

**Vacation**

After 7 months but less than 1 year of service.....five (5) days

1 year but less than 5 years of service.....ten (10) days

5 years of service but less than 15 years of service.....fifteen (15) days

15 years of service but less than 21 years of service.....twenty (20) days

21 years.....twenty-one (21) days

22 years.....twenty-two (22) days

23 years.....twenty-three (23) days

24 years.....twenty-four (24) days

25 years or more of service.....twenty-five (25) days

Plus 1 day per year for medical visit

**OFFICE OF THE COMPTROLLER, CITY OF NEW YORK  
BUILDING SERVICE EMPLOYEE PREVAILING WAGE SCHEDULE**

**SICK LEAVE:**

10 days after one year worked. Unused sick days to be paid in cash.

If, pursuant to U.S. Centers for Disease Control and Prevention, NYS Department of Health, and/or NYC Department of Health and Mental Hygiene guidelines, an Employer directs an employee or employees to self-quarantine or self-isolate because of a worksite exposure to COVID-19, such employee will be paid two (2) weeks of paid leave without reduction of any such affected employee's existing paid leave entitlements.

(Local #32 B/J)

**EXHIBIT E**

**CERTIFICATION BY BROKER OR AGENT**

## **CERTIFICATES OF INSURANCE**

### Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Worker's 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