

# DDC

Department of  
Design & Construction

City of New York

Michael R. Bloomberg  
Mayor

David J. Burney, AIA  
Commissioner

Louie Rueda, RA  
Deputy Commissioner, Structures Division

# RFP

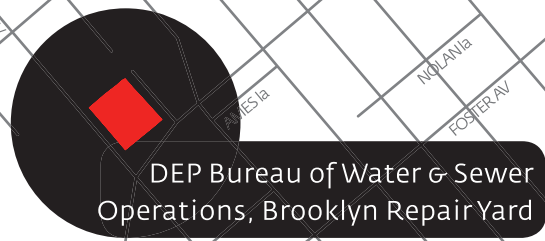
## Request for Proposal

### SUBMISSION DEADLINE

August 10, 2004

### PIN

85020051N0001P



DEP Bureau of Water & Sewer  
Operations, Brooklyn Repair Yard

### PROJECT

Consultant Services for Architectural,  
Engineering Design and Services During  
Construction, Two-Stage RFP

**06/30/04**

**PIN: 8502005IN0001P**

**DEPARTMENT OF DESIGN AND CONSTRUCTION**

**REQUEST FOR PROPOSALS, TWO-STAGE**

**PROJECT: EP06-REM**

**TABLE OF CONTENTS**

**PREFACE**

- I. TIMETABLE**
- II. SUMMARY OF THE REQUEST FOR PROPOSALS**
- III. SCOPE OF WORK**
- IV. FORMAT AND CONTENT OF THE PROPOSAL**
- V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**
- VI. GENERAL INFORMATION TO PROPOSERS**
- VII. ATTACHMENTS AND ENCLOSURES**

## PREFACE

This Request for Proposals (“RFP”) will be comprised of a two-stage selection process. In stage one, proposers will submit the materials prescribed in Section IV to document the proposer’s ability to act as lead Architectural/Engineering (“A/E”) designer for the project that is the subject of this RFP. Based on an evaluation of these materials, DDC will establish a short list of firms to be further considered in the second stage of the selection process. In stage two, the short listed firms only will submit proposals, including information on all subconsultants and related standard forms 254 and 255. The technical proposals will be evaluated based on each proposer’s demonstrated ability to carry out the project. The agency will commence fee negotiations with the highest rated firm.

### I. TIMETABLE

#### A. Submission Deadlines

a. Stage One submissions (1 original and 5 copies) shall be delivered on or before 4:00 PM on August 10, 2004 clearly marked with the project name and “Stage One Proposal” on the exterior of the envelope or other packaging. Proposals received after the due time prescribed in the RFP may be accepted at the discretion of DDC. The proposals shall be hand delivered to the contract person at the location listed below:

b. Stage Two submissions (1 original and 5 copies) shall be delivered on or before 4:00 PM on September 9, 2004 clearly marked with the project name and “Stage Two Proposal” on the exterior of the envelope or other packaging. Proposals received after the due time prescribed in the RFP may be accepted at the discretion of DDC. The proposals shall be hand delivered to the contact person at the location listed below:

Elon Sylvester, (718) 391-1530  
Professional Contracts Section  
Department of Design and Construction  
30-30 Thomson Avenue, 4th Floor (Entrance on 30th Place)  
Long Island City, New York 11101  
e-mail:[sylveste@ddc.nyc.gov](mailto:sylveste@ddc.nyc.gov)

**NOTE:** Respondents are held responsible for ensuring that the RFP response package is received by the Professional Contract Section by the deadline. Respondents are warned not to rely on signed delivery slips from their messenger services. Occasionally packages are delivered to the School Construction Authority located in the same building and the packages are not forwarded to the DDC Professional Contracts Section in a timely manner. Entrance to DDC is on 30<sup>th</sup> Place, not Thomson Avenue despite our Thomson Avenue house number.

**B. Inquiries**

In the event a proposer desires any explanation regarding the meaning or interpretation of this RFP, such explanation must be requested in writing, no later than one week prior to the submission date prescribed in the RFP. In the event DDC determines that it is necessary to respond to the inquiry in writing, such response will be furnished as an addendum to the RFP to all potential proposers and posted at the DDC website <http://nyc.gov/html/ddc/home.html> . All inquiries must be directed ONLY to the contact person listed above.

**C. Addenda**

Receipt of an addendum to this RFP by a proposer must be acknowledged by attaching an original signed copy of the addendum to the Proposal. All addenda shall become a part of the requirements for this RFP.

**D. RFP Schedule**

The following is the estimated timetable for receipt, evaluation, and selection of proposals. This is only an estimate and is provided to assist responding firms in planning.

- a. Establish Shortlist of Stage One Firms: Within two weeks of submission deadline
- b. Identify Consultant: Within two weeks of Stage Two submission deadline
- c. Complete Contract Registration: Approximately three months from date of consultant selection.
- d. Commence Work: Upon receipt of Notice of Award

## II. SUMMARY OF THE REQUEST FOR PROPOSAL

### A. General

The New York City Department of Design and Construction, Division of Structures, is seeking an appropriately qualified architectural firm to perform architectural, engineering, and construction-related services for DEP Remsen Avenue Repair Facility Reconstruction.

The selected firm would demonstrate an understanding and commitment to our goal of design excellence that will be typified by dignified spaces that exemplify accessible municipal government and inspire pride in the City. The design would incorporate a cost effective design approach fully considering life cycle analysis in selection of materials and systems, a balance of innovative design and traditional operating and maintenance practices including durability and ease of maintenance, layout and systems that provide safety beyond code compliance, high performance systems that provide value while protecting citizen's health and environment, and accessibility for all citizens that surpasses the minimum consideration of the ADA law.

### B. Background and Objectives of Project

The Remsen Avenue Repair Facility is an existing facility of the New York City Department of Environmental Protection, Bureau of Water and Sewer Operations. This division maintains and repairs the city's water distribution lines, as well as sewers and street catch basins. The Remsen Facility is the central base of operations for this work in the borough of Brooklyn.

The existing facility is housed in a building of approximately 11,000 square feet that also provides administrative offices, staff facilities, storage and workshops. There are some additional temporary storage buildings on the site. The site comprises approximately 110,000 square feet. Trucks and excavating equipment, as well as piping and other related materials, such as hydrants, are stored in an open yard. The yard is also a recycling sorting area for construction debris from the repair operations.

The new facility will be approximately 60,000 square feet and will provide for all new office and staff facilities, indoor workshops and truck parking. The exterior yard area will be reorganized to handle recycling operations and other storage in an environmentally responsible manner.

### C. Joint Ventures and Other Multiple Consultant Relationships (Stage Two Only)

The proposer is advised that submission of proposals by joint ventures is permitted. There is no minimum requirement for the proportion of work by either of the joint ventured parties. Joint ventures must carry the required insurances either as policies written specifically for the joint venture entity, or by using their existing single entity policies with endorsements written for the joint venture activity.

Proposers requested to submit Stage Two proposals may propose to subcontract a portion of the required services. However, the Department of Design and Construction does not recognize the corporate configuration wherein one company is “in association with” another. Relationships between two or more firms shall be either as joint venture or prime consultant/subconsultant. In the event that a proposal is received wherein two or more firms are described as being “in association with” each other, DDC will treat the relationship as one of prime consultant/subconsultant(s). The RFP evaluation will be handled accordingly, and if such proposal is selected for award, the contract documents will show only the prime firm (i.e., the firm that received the RFP solicitation) on the signature page; each other “associated” firm will be relegated to Exhibit B, which lists the subconsultants.

### III. SCOPE OF WORK

#### A. SPECIFIC REQUIREMENTS

The full and binding description of the Scope of Work is presented in the SPECIFIC REQUIREMENTS (SR) document, attached to this RFP as Exhibit B to the contract.

#### B. COST ESTIMATE

The construction cost estimate for the Scope of Work described in the Specific Requirements is \$25,000,000.00.

#### C. CONTRACT SCHEDULE

DDC is planning to complete this design project within twelve months. The projected time allotments for each major phase of the work are listed below:

Project Design Kickoff	within one week of date of Contract Award
Schematic Submission	- 80 days from Design Kickoff
Schematic Design Review	- 15 days from Schematic Submission
Preliminary Design Submission	- 90 days after Schematic Approval
Preliminary Design Review	- 15 days from Preliminary Submission
Final Design Submission	- 90 days from Approval to Proceed
Final Design Review	- 20 days from Final Design submission
Compliance	- 15 days from End of Final Review
Bid, Award, Register Contracts	- 60 days from Compliance Acceptance
Begin Construction within	- 30 days from Contract Registration

#### IV. FORMAT AND CONTENT OF THE PROPOSAL

##### A. STAGE ONE PROPOSAL REQUIREMENTS (1 original and 5 copies)

This stage serves to highlight each proposer's previously completed architectural projects that demonstrate extraordinary creativity and insight in the solution to a given architectural problem. Proposers should provide projects that reflect this ability both in the internal planning as well as in the project's relationship to its site and surrounding environment. Creative and innovative use of materials and construction methods should be clearly described.

Portfolio: Provide a portfolio of up to five projects built within the last ten years that demonstrate the firm's creativity and insight in solving architectural problems. For each project, include the following: (1) resume of the lead designer, (2) plan views and site plans for each project, with a three dimensional view of the exterior; and (3) a brief written description highlighting the salient characteristics of the project, including the design philosophy and approach and a description of what was innovative about the design. In addition, list any design citations or awards and entries to design competitions. Present each project on a single 11x17 inch sheet, including all text. All of the pages shall be bound in covers no larger than 9 x 12 inches. Format may be either landscape or portrait, but not both.

##### B. STAGE TWO PROPOSAL REQUIREMENTS (1 original and 5 copies)

For those firms short-listed in Stage One, the Stage Two Proposal will serve to highlight their management and technical ability to carry out a project of the scope and type that is the subject of this RFP.

Proposal: The Proposal should contain the following information:

1. A cover letter of no more than three pages, including the company name and address, and the name, address and telephone number of the person authorized to represent the responding firm. ***(Be sure to refer to the proper DDC project number and title.)*** Include a brief history of the firm, the overall firm organization, its goals and objectives, and a statement of design philosophy.
2. Experience of Firm and Subconsultants (if any)
  - A SF-254 Form, which lists the number of full-time staff currently employed and the projects on which the firm is currently working, has completed and future projects and commitments. Provide the value of these contracts and their schedules. (This form is available at <http://nyc.gov/html/ddc/html/otherfrm.html>.)
  - A SF-255 Form, which identifies the proposed principal-in-charge, lead designer, and project manager on the subject project. A resume of each person on the



project team should also be submitted in the SF-255 form. (This form is available at <http://nyc.gov/html/ddc/html/otherfrm.html>.)

- A SF-254 and SF-255 form for each of the subconsultants proposed to be part of the design team.
- Examples of up to five completed projects similar in scope and type to this project completed within the last ten years. Visual materials can take the form of a printed brochure, photographs, drawings or similar images.

### 3. Individuals Proposed for the Project Team

Identify and present the qualifications of the proposed lead designer, as well as the project manager and other key team members. The lead designer is required to be involved with the projects in all design matters for the full duration of the project. Provide and explain the management structure for the project. Include an explanation of technical quality control and budget control procedures.

As this will be a high performance project, demonstrate that the project team will include members with experience and expertise in the following areas: effectively addressing energy and daylight issues; filing with the USGBC; energy modeling (DOE2, Trace, etc.); high performance landscaping; geothermal or other alternative power systems; construction and demolition waste; and environmentally preferable materials.

### 4. Technical Approach

Provide a statement of the proposed project methodology, including project approach, problem solving techniques, statement of primary design objectives of this project intended to meet the standard of design excellence as described in Section II of this RFP, the level of engagement anticipated by the firm, and a statement of specific high performance and sustainable design opportunities seen to be appropriate for this project. In particular, identify critical project issues.

### 5. Subconsultants:

Attachment 1 (Part A) lists the types of subconsultants required for this project. Utilize Part A of Attachment 1 to identify by name the subconsultants the proposer intends to use for this project.

6. Key Personnel

Utilize Part B of Attachment 1 to identify by name the individuals who will perform the required services for the listed titles of Key Personnel set forth on the form and provide information demonstrating their qualifications.

8. Statement of Understanding

Sign and attach this document (Attachment 2) to the Proposal.

## **V. PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES**

### **A. TECHNICAL PROPOSAL EVALUATION**

#### **1. Stage One Selection Process**

a. An evaluation committee comprised of an independent design professional, DDC and client agency personnel will review, evaluate and score all Stage One proposals pursuant to the criteria prescribed below. This evaluation and scoring will determine the proposer's Stage One Technical Rating. Proposers will then be ranked in accordance with their overall Stage One Technical Ratings.

b. The rankings will be submitted to the Executive Consultant Selection Committee who will certify the results and determine the number of top ranked firms to be included on the short list of firms to be further considered in the Stage Two selection process.

#### **2. Stage One Proposal Evaluation Criteria**

a. The projects submitted will be evaluated for their design quality, the extent to which they demonstrate extraordinary creativity and insight in their solution to the design problem, and for their relationship to the site and the surrounding environment. (Weight 60%)

b. The projects submitted will be evaluated for their constructability, innovative use of materials and construction technology and for their potential long-term viability within reasonable cost parameters. (Weight 40%)

#### **3. Stage Two Selection Process (Applicable to Stage One Short-Listed Proposers Only)**

a. An evaluation committee comprised of an independent design professional, DDC and client agency personnel will review, evaluate and score all Proposals pursuant to the criteria prescribed below. This evaluation and scoring will determine the proposer's Stage Two Technical Rating. Proposers will then be ranked in accordance with their overall Stage Two Technical Ratings.

b. Each Stage Two proposer will be requested to make a one-hour presentation of their submission. Such presentation would include the following: (1) an introduction of the firm, the lead designer, project manager, and any subconsultants critical to the success of the project. (The Lead Designer, project manager and sustainable consultant shall be present.); (2) explanation of the proposed project methodology, including project approach, problem solving techniques, and statement of primary design objectives of this project intended to meet the standard of design excellence as described in Section II of this RFP;

and (3). a statement of specific high performance and sustainable design opportunities seen to be appropriate for this project . The presentation would be structured to highlight the team's response to the submission requirements noted below for Stage Two Proposals. In addition, the portfolio of projects submitted for Stage One would be available for further evaluation.

c. The evaluation committee may amend their initial Stage Two scores based on the proposers' presentation. Proposers will be ranked in accordance with their final technical ratings. The rankings will be submitted to the Executive Consultant Selection Committee who will certify the results and authorize price negotiations to commence with the highest ranked firm. Should successful negotiations fail with the highest ranked firm, the ECSC will authorize negotiations to commence with the next highest ranked firm.

#### 4. Stage Two Proposal Evaluation Criteria

a. The experience of the firm and proposed subconsultants will be evaluated in terms of their demonstrated capability to successfully execute a project of this type, size and complexity. Projects designed and built, including those of similar nature to this project, will be reviewed. The quality of those projects will be examined, including client satisfaction, and problems that may have arisen during construction reflecting on the constructability of the design drawings. (Weight 30%)

b. The educational background and experience of the individuals proposed for the Project Team. Emphasis will be placed on the clear definition of key roles and duties, as well as clear lines of communication especially in regard to client input and community concerns. (Weight 40%)

c. The firm's technical approach and methodology will be evaluated and scored. In particular, emphasis will be placed on the clear expression of the overall goals of the project, refining and defining the programmatic needs while solving the design problem, ensuring cost and quality control, and identifying high performance design opportunities. (Weight 30%)

#### 5. Basis of Award

The Department of Design and Construction will award a contract to the responsible proposer whose proposal is determined to be the highest quality and most advantageous to the City, taking into consideration the overall quality of the proposal as measured against the criteria set forth in this RFP and the successful negotiation of an appropriate fee. Such fee negotiation shall commence upon written notification and shall conclude not more than thirty days after receipt of the fee proposal.

## 6. Fee Proposal

One or more short-listed proposers will be requested, upon written notification, to submit a separate sealed envelope containing the Fee Proposal in not more than ten business days of such notification. The form for the submission of the Fee Proposal is included as Attachment 3 of this RFP. The Fee Proposal shall consist of the two fee components outlined below: (1) Design Fee, and (2) All Inclusive Hourly Rates for specified titles of personnel and shall be based on the attached contract and contract exhibits, as well as the project specific requirements.

Fee: The Design Fee shall be an amount that shall cover all costs and expenses incurred by the consultant and/or its subconsultant(s) in the performance of all required design and construction related services for the Project, as set forth in Article 6 of the attached contract, including all expenses related to management, overhead and any anticipated profit, exclusive of any expenses and anticipated profit for: (1) Hazmat Services as set forth in Article 6; (2) additional professional services as set forth in Article 6, and (3) reimbursable services as set forth in Article 6.

All Inclusive Hourly Rates: The Proposer shall submit All Inclusive Hourly Rates for specified titles of personnel. Such rates SHALL ONLY BE USED for those services, if any, the consultant is directed to perform on a Time Card basis (for example, Additional Professional Services and/or Hazmat Services). Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project, (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead, and (4) any anticipated profit. Such rates shall apply to all hours during which such personnel perform services for the Project, including overtime hours.

## 7. Supply and Service Report

Upon selection, the successful proposer will be required to submit one original copy of the Department of Business Services Supply and Service Report, a copy of which will be provided. Upon written notification, the proposer must submit the Supply and Service Report within ten days of such notification.

## 8. VENDEX

Upon selection, the successful proposer will be required to submit proof of filing of the appropriate VENDEX Questionnaires. Upon written notification the proposer must submit a Confirmation of Vendex Compliance to DDC within five days of official notification. A form for this confirmation is set forth in the RFP.

**The proposer is advised that Vendex Questionnaires and procedures have changed. See [www.nyc.gov/vendex](http://www.nyc.gov/vendex) to download the new VENDEX**

**Questionnaires and a Vendor's Guide to VENDEX or contact DDC's VENDEX Unit at 718-391-1565.**

(a) Submission: Vendex Questionnaires (if required) must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007.

(b) Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, proposers may be obligated to complete and submit VENDEX Questionnaires. Generally, if this proposal is \$100,000 or more, or if this proposal when added to the sum total of all contracts, concessions and franchises the proposer has received from the City and any subcontracts received from City contractors over the past twelve months, equals or exceeds \$100,000, Vendex Questionnaires must be completed. If required, Vendex Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after award.

9. Contract Finalization

Upon notification, the successful proposer will be asked to finalize a contract with DDC subject to the conditions specified in the RFP and to the agency's standard contract provisions. The contents of the selected proposal, together with this RFP and any addendum(s) provided during the proposal process, may be incorporated into the final contract to be developed by the agency.

**VI. GENERAL INFORMATION TO PROPOSERS**

- A. Non-Binding Acceptance of Proposals: This RFP does not commit the City to award a contract for any services.
- B. Incurring Proposal Costs: The City of New York is not liable for any costs incurred in the preparation of a response to this RFP. If Proposers choose to participate in negotiations, they may be asked to submit such price, technical data, or other revisions to their proposals as may be required by the City.
- C. Confidentiality: The contents of a Proposer's RFP response are not deemed confidential unless the Proposer identifies those portions of its response which it deems confidential, or containing proprietary information, or trade secrets. The Proposer must provide justification as to why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal.
- D. Reserved Rights: All proposal material submitted becomes the property of the City and the City reserves the right, at its sole discretion, to:
1. Reject any and all proposals received in response to this RFP;
  2. Award a contract to other than the lowest-fee Proposer;
  3. Waive, modify or correct any irregularities in proposals received, after prior notification to the Proposer;
  4. Use without limitation any or all of the ideas from submitted proposals;
  5. Contract for all or selected parts of the Proposer's proposal, selecting from the services offered without affecting the itemized pricing;
  6. Extend the time for submission of all proposals after notification to all prospective Proposers known to have received the RFP;
  7. Conduct discussions with offerers submitting acceptable proposals, award may be made without any discussion;
  8. Terminate negotiations with a selected Proposer and select the next most responsive Proposer, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable time of the commencement of negotiations as determined by the Commissioner;
  9. Postpone or cancel this RFP, in whole or in part, and to reject all proposals.

**E. Contractual Requirements**

1. Any firm awarded a contract as a result of this RFP will be required to sign the City's standard contract for A/E Consultant Services. A sample draft copy of the contract is attached for your information. The requirements for performance of this contract, as well as insurance, payment terms and all other provisions are contained in the contract.
2. Any information that may have been released either orally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither the City nor the Proposer.
3. The City will deal only with the A/E consultant and the City has no financial obligation to sub-consultants. However, all sub-consultants are subject to the City's contracting requirements including Equal Employment Opportunity (Executive Order #50 of 1980 as revised).
4. The prompt Payment provisions set forth in the edition of the Procurement Policy Board Rules in effect at the time of this solicitation shall be applicable to payments made under a contract resulting from this solicitation. The provisions require the payment to vendors of interest payments made after the required payment date except as set forth in the Rules. The A/E consultant must submit a proper invoice to receive payment, except where the contract provides that the consultant 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 Procurement Policy Board Rules and General Municipal Law 3-a.

5. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 1005, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.
6. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provision of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.



7. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City Mac Bride Principles Law; submission by the proposer of the New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to Local Based Enterprises program and its implementation rules.
8. Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal agency non-responsiveness determinations and agency non-responsibility determinations and to protest an agency's determination regarding the solicitation or award of a contract.
9. Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.
10. The Agency has determined that the contract to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

## VII. ATTACHMENTS AND ENCLOSURES

The following items are appended as attachments and enclosures to the RFP. Asterisked (\*) items need to be completed and returned as part of the stage two proposal submission package:

### A. Attachments

1. Stage Two Technical Proposal Forms\*
2. Stage Two Statement of Understanding\*
3. Stage Two Fee Proposal Form\*

### B. Enclosures

1. Confirmation of Vendex Compliance\* and VENDEX Certification of No Change (**Download new 2004 VENDEX Questionnaires and Certification of No Change from [www.nyc.gov/vendex](http://www.nyc.gov/vendex)** )
2. Contract / Specific Requirements

**ATTACHMENT 1**

**STAGE TWO PROPOSAL FORMS**

**A. FORM FOR IDENTIFICATION OF SUBCONSULTANTS  
(include this form with the Proposal)**

As set forth in Section IV(B)(5) of the RFP, the Proposer must identify by name the specific Subconsultants the proposer intends to use to perform the required services. Specifically, identify the Subconsultants for the services set forth below. If for any of the areas set forth below, the Proposer intends to perform the services with its own employees, so indicate by inserting the words "In House".

Structural Engineering:	_____
Electrical Design:	_____
Mechanical Design:	_____
Plumbing Design:	_____
Interior Design and Furniture Layout:	_____
Historic Preservation Design:	_____
Landscaping Design:	_____
Hazmat Design:	_____
High Performance Design:	_____
Cost Estimating:	_____
Specifications:	_____

**ATTACHMENT 1 (continued)**

**B. FORM FOR IDENTIFICATION OF KEY PERSONNEL  
(include this form with the Proposal)**

As set forth in Section IV(B)(6) of the RFP, identify by name the individuals who will perform the required services for the titles of Key Personnel set forth below and provide information demonstrating their qualifications. After selection of the Consultant, the qualification information provided by the Proposer on this form will be included in Exhibit E to the attached contract.

**ARCHITECTURAL PERSONNEL**

TITLE	NAME	Number of Years of Experience	Professional License or Certification
Principal	_____	_____	_____
Lead Designer	_____	_____	_____
Project Manager	_____	_____	_____
Project Architect	_____	_____	_____

**ATTACHMENT 2**

**STAGE TWO STATEMENT OF UNDERSTANDING**

By signing in the space provided below, the undersigned certifies that the respondent (i) has read and understands the scope and requirements of this contract, as described in the RFP and all attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the standard design contract, attached hereto, and (iv) will, if its proposal is accepted, enter into the attached Standard design contract with the New York City Department of Design and Construction.

I hereby certify that my firm will carry all insurances specified in the contract.

The undersigned further stipulates that the information in this Proposal is, to the best of knowledge, true and accurate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Consultant Firm

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Federal Tax I.D.

\_\_\_\_\_  
Address

**ATTACHMENT 3**

**STAGE TWO FEE PROPOSAL FORM**

**The Fee Proposal shall be submitted only upon written notification.**

Design Fee: For the performance of all required Design Services for the Project, as set forth in Article 6.3 and as amended by Exhibit A, the City agrees to pay and the Consultant agrees to accept a total Design Fee, the amount of which is set forth below. The Design Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultant(s) in the performance of all required Design Services for the Project, as set forth in Article 6.3 and as amended by Exhibit A, including all expenses related to management, overhead and any anticipated profit, exclusive of any expenses and anticipated profit for: (1) Pre-Preliminary Design Services, as set forth in Article 6.2; (2) Additional Professional Services, as set forth in Article 6.5; (3) Hazmat Services, as set forth in Article 6.4; (4) Reimbursable Services, as set forth in Article 6.6, and (5) Artwork, as set forth in Article 6.3.11.

Design Fee: \$ \_\_\_\_\_

**NOTE: The Consultant shall not leave any blanks nor qualify the fees in any way.  
ATTACHMENT 3 (continued)**

(2) ALL-INCLUSIVE HOURLY RATES

The Proposer shall submit All Inclusive Hourly Rates for specified titles of personnel. Such rates SHALL ONLY BE USED for those services, if any, the consultant is directed to perform on a Time Card basis (for example, Additional Professional Services and/or Hazmat Services). Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project, (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead, and (4) any anticipated profit. Such rates shall apply to all hours during which such personnel perform services for the Project, including overtime hours.

With respect to principals of the Consultant and/or its Subconsultants, payment shall be limited to time spent by a principal performing actual services for the Project. No payment shall be made for a principal's time performing oversight or management duties.

**ARCHITECTURAL PERSONNEL**

TITLE	ALL INCLUSIVE HOURLY RATE
Principal.....	_____
Lead Designer.....	_____
Project Architect.....	_____
Project Manager.....	_____
Senior Architectural Designer.....	_____
Junior Architectural Designer.....	_____
Senior Interior Designer.....	_____
Junior Interior Designer.....	_____
Programming Specialist.....	_____
Senior Landscape Architect.....	_____
Junior Landscape Designer.....	_____
Senior Drafter/CAD .....	_____
Intermediate Drafter/CAD.....	_____
Junior Drafter/CAD.....	_____

**ENGINEERING PERSONNEL**

TITLE	ALL INCLUSIVE HOURLY RATE
Principal.....	_____
Project Engineer.....	_____
Project Manager.....	_____
Senior Structural Designer.....	_____

Senior Electrical Designer..... \_\_\_\_\_  
 Senior Plumbing Designer..... \_\_\_\_\_  
 Senior HVAC Designer..... \_\_\_\_\_  
 Junior Structural Designer..... \_\_\_\_\_  
 Junior Electrical Designer..... \_\_\_\_\_  
 Junior Plumbing Designer..... \_\_\_\_\_  
 Junior HVAC Designer..... \_\_\_\_\_  
 Senior Engineering Draftser/CAD..... \_\_\_\_\_  
 Intermediate Engineering Drafter/CAD..... \_\_\_\_\_  
 Junior Engineering Drafter/CAD..... \_\_\_\_\_

**PERSONNEL FOR ESTIMATING AND SPECIFICATIONS**

TITLE	ALL INCLUSIVE HOURLY RATE
Principal.....	_____
Senior Estimator.....	_____
Senior Specification Writer.....	_____

**PERSONNEL FOR HIGH PERFORMANCE DESIGN**

TITLE	ALL INCLUSIVE HOURLY RATE
LEED Specialist	_____
Energy Modeler	_____
Geothermal/ Alt. Power Specialist	_____
High Performance Materials Specialist	_____
Solid Waste Specialist	_____

**PERSONNEL FOR HAZMAT SERVICES**

Principal..... \_\_\_\_\_  
 Hazmat Project Manager..... \_\_\_\_\_  
 Hazmat Project Designer..... \_\_\_\_\_  
 Hazmat Inspector / Investigator..... \_\_\_\_\_  
 Hazmat Monitor..... \_\_\_\_\_

**PERSONNEL FOR VARIOUS SPECIALTIES**

TITLE	ALL INCLUSIVE HOURLY RATE
Historic Preservation Specialist.....	_____
Masonry Conservation Specialist.....	_____
Fire Protection Specialist.....	_____
Geotechnical Specialist.....	_____



Junior Specialist..... \_\_\_\_\_  
Specialist Technician..... \_\_\_\_\_  
Senior Drafter/CAD..... \_\_\_\_\_  
Intermediate Drafter/CAD \_\_\_\_\_  
Junior Drafter/CAD..... \_\_\_\_\_

**NOTE: The Consultant shall not leave any blanks nor qualify fees in any way. Do not retype this form. Provide fee only on this form!**

\_\_\_\_\_  
Name of Principal (please print)

\_\_\_\_\_  
Signature of Principal

\_\_\_\_\_  
Date

**CONFIRMATION OF VENDEX COMPLIANCE**

The Proposer shall submit this Confirmation of Vendex Compliance \_\_\_\_\_  
\_\_\_\_\_.

Name of Proposer: \_\_\_\_\_

Proposer's Address: \_\_\_\_\_

Proposer's Telephone Number: \_\_\_\_\_

Proposer's Fax Number: \_\_\_\_\_

Date of Proposal Submission: \_\_\_\_\_

Project ID: \_\_\_\_\_

**Vendex Compliance:** To demonstrate compliance with Vendex requirements, the Proposer shall complete either Section (1) or Section (2) below, whichever applies.

- (1) **Submission of Questionnaires to MOC:** By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted Vendex Questionnaires to the Mayor's Office of Contract Services, Attn: VENDEX, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007.

Date of Submission: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Partner or corporate officer)

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

- (2) **Submission of Certification of No Change to DDC:** By signing in the space provided below, the Proposer certifies that it has read the instructions in a "Vendor's Guide to Vendex" and that such instructions do not require the Proposer to submit Vendex Questionnaires. The Proposer has completed **TWO ORIGINALS** of the Certification of No Change.

By: \_\_\_\_\_  
(Signature of Partner or corporate officer)

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

**THE CITY OF NEW YORK**  
**DEPARTMENT OF DESIGN AND CONSTRUCTION**  
**DIVISION OF STRUCTURES**  
**30-30 THOMSON AVENUE**  
**LONG ISLAND CITY, NEW YORK NEW YORK 11101**  
**CONTRACT FOR**  
**ARCHITECTURAL, ENGINEERING**  
**AND CONSTRUCTION RELATED SERVICES**

**PROJECT:** DEP Remsen Avenue Repair Facility Reconstruction

**PROGRAM UNIT:** \_\_\_\_\_

**FMS NUMBER:** \_\_\_\_\_

**REGISTRATION  
NUMBER:** \_\_\_\_\_

**PIN NUMBER:** \_\_\_\_\_

**CONSULTANT:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**EIN:** \_\_\_\_\_

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

**Standard Project Specific Contract (Lump Sum Fee)**  
**Architectural, Engineering and Construction Related Services**  
**July 2004**

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

WITNESSETH:

WHEREAS, the City desires to have architectural, engineering and construction related services performed for the Project described in the Specific Requirements (Exhibit B), and

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

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

ARTICLE 1 Definitions

1.1 "Agreement" shall mean this Agreement which has been signed by the parties, including (1) the Request for Proposals for the Project ("RFP"); (2) the Consultant's Proposal submitted for the Project, and (3) the Exhibits set forth below. In the event of any conflict between the Specific Requirements and any other component, the Specific Requirements shall prevail. Amendments to the Contract, if any, are set forth in Exhibit A, Contract Information and Amendments.

Exhibit A	Contract Information and Amendments
Exhibit B	Specific Requirements
Exhibit C	Key Personnel and List of Subconsultants
Exhibit D	Design Fee
Exhibit E	List of Titles of Personnel and All Inclusive Hourly Rates
Exhibit F	Requirements Per Title
Exhibit G	Schedule of Unit Prices for Laboratory Services
Exhibit H	Design Consultants Guide dated August 2003

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

1.3 "Agency Chief Contracting Officer" ("ACCO") shall mean the person designated by the Commissioner to exercise such powers and duties with respect to procurement as are set forth in the Procurement Policy Board Rules.

1.4 "City" shall mean the City of New York.

1.5 "Commissioner" or "Agency Head" shall mean the Commissioner of the Department of Design and Construction of the City of New York, his successors, or duly authorized representative(s).

1.6 "Commissioner's Representative" shall mean the Project Manager designated by the Commissioner or any successor or alternate representative designated by the Commissioner.

1.7 "Comptroller" shall mean the Comptroller of the City of New York, her successors, or duly authorized representatives.

1.8 "Consultant" shall mean the party of the second part hereto, whether a corporation, firm, or individual, or any combination thereof, and its, their, his or her successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in the place of the party of the second part under this Contract.

1.9 "Contract" or "Contract Documents" shall mean the Agreement referred to in Paragraph 1.1 of this Article.

1.10 "Department" or "DDC" shall mean the Department of Design and Construction of the City of New York acting by and through the Commissioner thereof, or his duly authorized representative.

1.11 "Drawings" shall mean all graphic or written illustrations, descriptions, explanations, directions, requirements and standards of performance applied to the construction work.

1.12 "Engineer", as used in the Article entitled "Resolution of Disputes", shall mean the Commissioner's Representative.

1.13 "Government Entity" shall mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.

1.14 "Law(s)" shall mean each and every law, rule, regulation, order or ordinance of any kind whatsoever issued by any Government Entity, in effect from the date of this Agreement through the conclusion or termination hereof, applicable to or affecting the Project and all employees engaged hereunder.

1.15 "Mayor" shall mean the Mayor of the City of New York, his successors or duly authorized representatives.

1.16 "Modification" shall mean any written amendment of this Agreement signed by both the Department and the Consultant.

1.17 "Project" shall mean the Project for which architectural, engineering and construction related services are required, as described in the Specific Requirements (Exhibit B).

1.18 "Safety Standards" shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date of this Agreement through Final Acceptance of the construction work, pertaining to worker safety and accident prevention applicable to the Project and/or the construction work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

1.19 "Shop Drawing" shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the construction work.

1.20 "Site(s)" shall mean the area(s) upon or in which the construction work for the Project is carried on, and such other areas adjacent thereto as may be designated by the Commissioner.

1.21 "Specifications" shall mean all of the directions, requirements and standards of performance applied to the construction work.

1.22 "Subconsultant" shall mean any person, firm, or corporation, other than employees of the Consultant, who or which contracts with the Consultant or his subconsultants to furnish, or actually furnishes services, labor, or labor and materials, or labor and equipment hereunder. All Subconsultants are subject to the prior written approval of the Commissioner.

1.23 "Treasurer" shall mean the Commissioner of the Department of Finance of the City of New York.

## ARTICLE 2 Compliance with Laws

2.1 Procurement Policy Board Rules: This contract is subject to the Rules of the Procurement Policy Board of the City of New York ("PPB Rules") in effect at the time of the receipt of proposals for this Contract. In the event of a conflict between the PPB Rules and a provision of this Contract, the PPB Rules shall take precedence.

2.2 The Consultant shall comply with all local, State and Federal laws, rules and regulations applicable to this Agreement and to the services to be performed hereunder.

2.3 The Consultant shall comply with Section 24-216(b) of the Administrative Code of the City of New York and with the New York City Noise Control Code and with all regulations issued pursuant to Section 24-216(b) of the Administrative Code or the Noise Control Code.

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

## ARTICLE 3 Agreement to Serve

3.1 The City hereby retains the Consultant to perform the services hereinafter described, on the terms and conditions specified herein, and the Consultant agrees to so serve. The Consultant agrees to provide, to the satisfaction of the Commissioner, all architectural, engineering and construction related services necessary and required for the Project, as set forth in this Contract. The Consultant hereby certifies that it has the necessary experience, expertise, staff and resources to fulfill its obligations under this Contract competently and efficiently.

## ARTICLE 4 The Project

4.1 The Consultant shall provide all architectural, engineering and construction related services required for the Project described in the Specific Requirements (Exhibit B).

## ARTICLE 5 The Consultant's Personnel

5.1 Provision of Personnel: The Consultant agrees, throughout the term of the Contract, to provide personnel for the performance of all required architectural, engineering and construction related services for the Project, as set forth in Article 6. The Consultant shall provide all personnel required for the performance of such services through its own employees and/or through its Subconsultants, as set forth in Exhibit C, except as otherwise approved by the Commissioner. The Consultant specifically agrees that its employees, agents and Subconsultants shall possess the experience, knowledge and character necessary to

qualify them individually for the particular duties they perform.

5.2 Key Personnel: Key Personnel for the Project are set forth in Exhibit C. Such Key Personnel were identified by the Consultant in its Proposal for the Project. The Consultant specifically agrees to assign such Key Personnel to the Project for the entire duration thereof, unless otherwise approved by the Commissioner. Failure by the Consultant to provide such Key Personnel shall be grounds for termination for cause in accordance with Article 14.

5.2.1 Replacement of Key Personnel: No substitutions for Key Personnel shall be permitted unless approved in advance in writing by the Commissioner. Such approval will only be granted in the case of extenuating circumstances. Any proposed replacement for Key Personnel must possess qualifications substantially similar to those of the Key Personnel being replaced. In addition, at the Commissioner's request at any time, the Consultant shall remove any Key Personnel or other personnel and substitute another employee of the Consultant or Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, in his sole discretion.

5.3 Subconsultants: Subconsultants for the Project are set forth in Exhibit C. Such Subconsultants were identified by the Consultant in its Proposal for the Project. The Consultant specifically agrees to engage such Subconsultants for the Project for the entire duration thereof, unless otherwise approved by the Commissioner. Failure by the Consultant to provide the Subconsultants set forth in Exhibit C shall be grounds for termination for cause in accordance with Article 14. The Consultant shall be responsible for the performance of services by all its Subconsultants, including maintenance of schedules, correlation of their work and resolution of all differences between them.

5.3.1 Approval: Subconsultants are subject to the prior written approval of the Commissioner; provided, however, no provision of this Contract shall be construed as constituting an agreement between the Commissioner and any Subconsultant.

5.3.2 Replacement Subconsultants: No substitution for any Subconsultant shall be permitted unless approved in advance in writing by the Commissioner. Such approval will only be granted in the case of extenuating circumstances. Any proposed replacement Subconsultant must possess qualifications and experience substantially similar to those of the Subconsultant being replaced. In addition, at the Commissioner's request at any time, the Consultant shall remove any Subconsultant and substitute another Subconsultant reasonably satisfactory to the Commissioner. The Commissioner may request such substitution at any time, if, in his sole opinion, he determines that any Subconsultant may be unable to satisfactorily provide the required services in a timely fashion.

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

5.3.4 Subcontracts: The Consultant shall inform all Subconsultants engaged for this Project fully and completely of all terms and conditions of this Contract relating either directly or indirectly to the services to be performed. The Consultant shall stipulate in all subcontracts with its Subconsultants that all services performed and materials furnished thereunder shall strictly comply with the requirements of this Contract. If requested by the Commissioner, the Consultant shall furnish copies of subcontracts with its Subconsultants.

5.3.5 Specialty Subconsultants: In the event there is a need for a special type of services

for the Project which is not provided by the Consultant or its Subconsultants set forth in Exhibit C, the Consultant agrees to engage a Subconsultant to provide such special services. The Consultant shall provide such specialty Subconsultant as a Reimbursable Service in accordance with Article 6.6.

5.4 Services Based upon Staffing Hours (Time Card): The Consultant may be directed to perform services based upon staffing hours (time card), as set forth below. No such services shall be performed by the Consultant unless expressly authorized in advance in a written directive from the Commissioner. The requirements set forth below shall apply to the performance of such services.

- (a) Pre-Preliminary Services, as set forth in Article 6.2.
- (b) Additional Professional Services, as set forth in Article 6.5.
- (c) Hazmat Services, as set forth in Article 6.4.

5.4.1 Titles of Personnel: A list of titles of personnel, as well as All Inclusive Hourly Rates for such titles, are set forth in Exhibit E. Such list specifies the titles of personnel which may be required for the performance of services based upon staffing hours (time card). The Consultant shall be required to provide such personnel through its own employees and/or through its Subconsultants.

5.4.2 Requirements Per Title: Any personnel provided by the Consultant and/or its Subconsultant must satisfy the requirements for the specific title in which he/she is performing services. The requirements for any given title shall be the **GREATER** of the requirements set forth below. The Consultant shall provide resumes or other documentation acceptable to the Commissioner to demonstrate that personnel provided hereunder comply with the requirements per title. In exceptional circumstances, the Commissioner, in his sole and absolute discretion, may modify the requirements per title.

- (a) the requirements for the title in question, as set forth in Exhibit F. Such requirements shall consist of the specific qualifications of the individual identified in Consultant's Proposal for the title in question, i.e., that individual's number of years of experience, as well as his/her technical and professional qualifications.
- (b) the minimum requirements for the title in question, as set forth in Exhibit F.

5.4.3 Staffing Plan: A Staffing Plan shall be established and approved by the Commissioner prior to commencement of the performance of services based upon staffing hours (time card) by the Consultant. Such Staffing Plan shall include the items set forth below. Such Staffing Plan shall include only those personnel necessary for the performance of the required services.

- (a) required Key Personnel
- (b) required titles of personnel (other than Key Personnel) and specific personnel for each title
- (c) All Inclusive Hourly Rates for all required personnel, as approved by the Commissioner in accordance with Article 5.4.6
- (d) total estimated hours for all required personnel
- (e) total estimated amount for all required personnel

5.4.4 Payment Limitation: In accordance with Article 7.3, payment to the Consultant for the performance of services based upon staffing hours (time card) shall be limited to those personnel set forth in the approved Staffing Plan. The Consultant shall not be entitled to payment for any personnel who are not included in the approved Staffing Plan. The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services for the Project in accordance with one of the titles set forth in Exhibit F, and (2) such principal is included in the approved Staffing Plan for such title.



5.4.5 Consultant's Proposed Staffing Plan: Within five (5) business days of a written request from the Commissioner, the Consultant shall submit a proposed Staffing Plan for services based upon staffing hours (time card). Such proposed Staffing Plan shall include the items set forth in Article 5.4.3. With respect to proposed personnel, the Consultant shall submit the individual's resume and any other information detailing his/her number of years of experience, as well as technical and professional qualifications. In addition, the Consultant shall submit the following for all required personnel: (1) total estimated hours; (2) total estimated amount(s), and (3) applicable All Inclusive Hourly Rate(s), in accordance with Exhibit E.

5.4.6 Review and Approval of Staffing Plan: The Commissioner shall review the Consultant's proposed Staffing Plan and shall direct revisions to the same if necessary prior to final approval thereof. As part of his review of the proposed Staffing Plan, the Commissioner shall determine whether each individual proposed by the Consultant meets the requirements for the title in question, as set forth in Article 5.4.2 above, including the requisite number of years of experience, as well as technical and professional qualifications. The Commissioner shall also determine: (1) whether the personnel proposed by the Consultant are necessary for the provision of the required services, and (2) the All Inclusive Hourly Rates applicable to all specified personnel, in accordance with Exhibit E. The Consultant shall revise the proposed Staffing Plan as directed, until the same is approved in writing by the Commissioner.

5.4.7 Revisions to Staffing Plan: The Commissioner may, at any time, direct revisions to the Staffing Plan, including without limitation, increasing or decreasing the specified personnel, based upon the scope of required services. The Consultant shall increase or decrease the specified personnel, as directed by the Commissioner.

5.6 Employees of the Consultant: The Consultant is solely responsible for the work and deportment of all its personnel and its Subconsultants. These are employees of the Consultant or its Subconsultant and not of the City.

## ARTICLE 6 Scope of Services

6.1 General Description of Services: The Consultant shall provide, to the satisfaction of the Commissioner, all architectural, engineering and construction related services necessary and required for the Project. The services the Consultant may be required to provide shall include without limitation the services set forth in this Article 6. Amendments to this Article, if any, are set forth in Exhibit A, Contract Information and Amendments. The services set forth herein are further described in the Specific Requirements (Exhibit B) and the Design Consultants Guide (Exhibit H). The Consultant shall provide the services set forth in this Article 6 through its own employees and/or through its Subconsultants.

6.2 Pre-preliminary Services: The Consultant shall provide Pre-preliminary Services, as set forth in the Design Consultants Guide, as directed by the Commissioner.

6.3 Design Services: The Consultant shall provide Design Services as directed by the Commissioner. Such Design Services shall be based upon the scope of work set forth in Exhibit B and shall be in accordance with the provisions set forth below. Amendments to this Article, if any, are set forth in Exhibit A, Contract Information and Amendments. All Design Services set forth in this Article 6.3, as amended by Exhibit A, are deemed included in the Design Fee set forth in Article 7.

6.3.1 Services Included in Design Services: The Design Services provided by the Consultant shall include the design services set forth in Exhibit B, plus all necessary and usual components and/or services in connection with the design, including without limitation the following: (1) architectural design;

(2) structural design; (3) electrical design; (4) heating, ventilating and air-conditioning (HVAC) and fire protection design; (5) plumbing design; (6) interior design and furniture layout; (7) historic preservation design; (8) landscaping design; (9) programming services; (10) cost estimating services, and (11) coordination of the design. The Consultant shall, through its Subconsultant, provide Hazmat Services, as set forth in Paragraph 6.4 below.

6.3.2 Specific Design Services: The Consultant shall provide the specific Design Services set forth below. Amendments to this Article, if any, are set forth in Exhibit A, Contract Information and Amendments. All Design Services set forth in this Article 6.3, as amended by Exhibit A, are deemed included in the Design Fee set forth in Article 7.

- (a) Preparation of Design Documents: The Consultant shall provide services for the preparation of design documents as set forth in the Design Consultants Guide.
- (b) Services during Construction: The Consultant shall provide services during construction as set forth in the Design Consultants Guide, Section VII (A).

6.3.3 Design Criteria: All required Design Services shall be in accordance with the following: (1) the Specific Requirements; (2) the Design Consultants Guide, and (3) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code and the Americans With Disabilities Act.

6.3.4 Separate Design Documents: The Consultant shall prepare and organize the design documents to permit the separate bidding and award of contracts for general construction work, plumbing work, electrical work and HVAC work. All costs for the preparation of separate design documents are deemed included in the Design Fee set forth in Article 7 hereof.

6.3.5 Submission of Design Documents: The Consultant shall submit design documents in accordance with the time frames set forth in Exhibit B.

6.3.6 Approval of Design Documents: All required design documents, including cost estimates, are subject to review and written approval by the Commissioner. Final design documents are subject to approval by all regulatory agencies whose approval of the design is required, including without limitation the Department of Buildings, and, if required, the Art Commission and the Landmarks Preservation Commission.

6.3.7 Self-Certification: Self-Certification may be required by the Commissioner for approval by the Department of Buildings.

6.3.8 Architect of Record: All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the Architect of Record, and shall be accompanied by all necessary applications, certificates, or permits of all local, state and federal agencies having jurisdiction over the Work.

6.3.9 Tropical Hardwoods: In accordance with Section 165 of the New York State Finance Law, design documents prepared by the Consultant shall not specify the use of tropical hardwoods, as defined in Section 165 of the State Finance Law, except as such use is permitted by the foregoing provision of law.

6.3.10 Certificates of Occupancy: The Consultant shall assist the Commissioner in obtaining temporary and permanent certificates of occupancy for the Project.

6.3.11 Artwork: The Consultant shall provide for the inclusion of artwork in the Project in accordance with Chapter 9, Section 224, of the New York City Charter and the rules and regulations promulgated thereunder. All costs for such artwork shall be paid from the Allowance for Artwork, as set forth in Article 7.6. For its services in connection with the artwork, the Consultant shall be entitled to a fee, the amount of which shall be five (5%) percent of the total actual cost of the artwork. Such fee shall be in addition to the Design Fee set forth in Article 7. To comply with Section 224 of the Charter, the Consultant shall be responsible for the items set forth below, as directed by the Commissioner.

- (a) Consult with and cooperate with a panel established by the Commissioner of the Department of Cultural Affairs. The Consultant shall also prepare all data, documentation, drawings and plans to be presented to and considered by such panel.
- (b) Engage an artist and administer and/or manage the services of such artist. For engagement of the artist, the Consultant shall use the standard form of contract approved by the Commissioner. The services of the artist shall be in accordance with the terms and conditions of such contract, including without limitation, requirements for fabrication, models, shipping, insurance, storage, scaffolding, structural work and anchorage.

6.4 Hazmat Services: The Consultant shall, through its Subconsultant set forth in Exhibit C, provide investigative and design services in connection with the removal of hazardous materials (“Hazmat Services”), as directed by the Commissioner. Hazmat Services shall be as set forth in Exhibit B.

6.5 Additional Professional Services: The Consultant may be directed by the Commissioner to provide Additional Professional Services for the Project, as set forth below. The Consultant shall provide such Additional Professional Services through its own professional employees or through its Subconsultants, as directed in writing by the Commissioner. Amendments to this Article, if any, are set forth in Exhibit A, Contract Information and Amendments.

6.5.1 Additional Professional Services shall be professional services which the Commissioner determines are required for the Project and are in addition to or beyond the necessary and usual services in connection with Design Services, as set forth in Article 6.3. Additional Professional Services shall include, without limitation, the services set forth below.

- (a) Services set forth in the Design Consultants Guide, Section VII (B)
- (b) Changes to the design documents, as set forth in Articles 6.9.1(b) and 6.9.2 below
- (c) any other professional services, determined by the Commissioner to be necessary for the Project.

6.5.2 Additional Professional Services shall not include the services set forth in Articles 6.9.1(a) and 6.9.3 below.

6.5.3 Payment for Additional Professional Services shall be based upon staffing hours (time card) in accordance with Article 7.3.

6.5.4 If the Consultant is of the opinion that any service it has been directed to perform constitutes an Additional Professional Service in accordance with Article 6.5.1 above, the Consultant shall notify the Commissioner in writing within five (5) business days of such direction. The Commissioner's determination as to whether or not such service constitute Additional Professional Service shall be final, conclusive and binding upon the Consultant.

6.6 Reimbursable Services: The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project, as set forth below. The Consultant shall provide such Reimbursable

Services, if so directed in writing by the Commissioner. The Consultant shall provide such Reimbursable Services through entities approved by the Commissioner, and shall utilize the method of procurement and form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with Article 7.5.

6.6.1 Reimbursable Services shall be such services determined by the Commissioner to be necessary for the Project, and may include, without limitation, the services set forth below.

- (a) Conducting exploratory probes and/or tests to investigate concealed construction
- (b) Printing design documents beyond requirements set forth in the Design Consultants Guide
- (c) Laboratory services for controlled inspection
- (d) Long distance travel, i.e., travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) Consultant's home office
- (e) Filing fees and related application fees for New York City agencies
- (f) specialty consultants, other than the Subconsultants set forth in Exhibit C
- (g) any other services, determined by the Commissioner to be necessary for the Project

6.7 Non-reimbursable Services: Throughout the Project, the Consultant shall be responsible for providing the non-reimbursable services set forth below. All costs for such services are deemed included in payments to the Consultant as set forth in Article 7 hereof.

6.7.1 The Consultant shall, when requested by the Commissioner, provide overnight delivery of the following Project documents: (1) design documents; (2) all required submittals, including without limitation shop drawings, material samples and catalogue cuts; (3) change orders; (4) documents with respect to payment, and (5) any other critical communications and/or documents.

6.7.2 The Consultant shall provide transportation, including parking and tolls, for all personnel performing services at the Project site. The transportation provided shall be vehicular, unless the Project site can be easily accessed by public transportation.

6.7.3 The Consultant shall provide communications equipment, including without limitation cellular telephones and beepers, for all its field and Key Personnel assigned to the Project. The telephone and beeper numbers of all such field and Key Personnel shall be submitted to the Commissioner.

6.7.4 The Consultant shall provide all expediting services necessary and required with respect to securing all required regulatory approvals of the design.

6.8 Assistance to Commissioner: Should any claim be made or any action brought against the Commissioner or the City of New York relating to the design of the Project, the Consultant shall diligently render to the City without additional compensation any and all assistance which may be requested by the Commissioner.

## 6.9 Provisions Regarding Changes to the Design Documents

### 6.9.1 Changes Not Involving Scope:

- (a) The Consultant shall revise and correct, without additional compensation therefore, any and all design documents until the same shall be accepted by the Commissioner and by all other agencies whose approval is required by law.
- (b) Should any substantial change, other than a change in Project scope, make it necessary for the Consultant to change design documents after approval of the preliminary or final

design documents, the Commissioner shall direct such change in writing. Such change shall constitute an additional professional service.

6.9.2 Decrease in Scope: The Commissioner shall have the right to reduce the scope of the services of the Consultant hereunder, at any time and for any reason, upon written notice to the Consultant, specifying the nature and extent of such reduction. In such event, the Consultant shall be paid, in accordance with the payment terms set forth in Article 7, for services already performed prior to receipt of written notification of such reduction in scope, as determined by the Commissioner. Any services performed by the Consultant to revise the design documents as a result of the reduction in the scope of the Project shall constitute Additional Professional Services in accordance with Article 6.5.1 above.

6.9.3 Changes through Fault of Consultant: In the event that any change is required to the design documents because of defects of design or unworkability of details, or because of any other fault or errors of the Consultant, no additional compensation shall be paid to the Consultant for making such changes.

## ARTICLE 7 Payment Terms and Conditions

### 7.1 Total Payments

7.1.1 Maximum Amount: The Maximum Amount of the Contract is set forth in Exhibit A (the "Maximum Amount"). Total payments for all services performed and all expenses incurred pursuant to this Agreement shall not exceed the Maximum Amount. The Maximum Amount does not represent a commitment or guarantee on the part of the City to pay such amount, unless it has been determined to be due and payable to the Consultant in accordance with the terms and conditions set forth herein. The Maximum Amount is comprised of the following: (1) the Design Fee, (2) the Allowance for Services Based Upon Staffing Hours (Time Card), (3) the Allowance for Hazmat Services, (4) the Allowance for Reimbursable Services, and (5) the Allowance for Artwork, as set forth herein.

7.1.2 Method of Payment: The method of payment for the performance of architectural, engineering and construction related services by the Consultant shall be as set forth below.

- (a) Pre-preliminary Services: Payment for Pre-preliminary Services, as set forth in Article 6.2, shall be based upon staffing hours (Time Card), as set forth in Article 7.3.
- (b) Design Services: Payment for Design Services, as set forth in Article 6.3, shall be through the Design Fee, as set forth in Article 7.2.
- (c) Additional Professional Services: Payment for Additional Professional Services, as set forth in Article 6.5, shall be based upon staffing hours (Time Card), as set forth in Article 7.3.
- (d) Hazmat Services: Payment for Hazmat Services, as set forth in Article 6.4, shall be as set forth in Article 7.4.
- (e) Reimbursable Services: Payment for Reimbursable Services, as set forth in Article 6.6, shall be as set forth in Article 7.5.
- (f) Artwork: Payment for Artwork, as set forth in Article 6.3.11, shall be as set forth in Article 7.6.

7.1.3 Allowances: In the event the amount of the allowances set forth in this Article 7 are not sufficient, as determined by the Commissioner, to cover the cost of services which the Consultant is directed to provide, the Commissioner will increase the amount of such allowances.

7.1.4 Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances, as set forth in this Article 7, the Commissioner may, by issuance of a No Cost Change

Order to the Consultant, reallocate such specific allowance amounts within this Article 7.

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

## 7.2 Payment for Design Services

7.2.1 Design Fee: For the performance of all required Design Services for the Project, as set forth in Article 6.3 and as amended by Exhibit A, the City agrees to pay and the Consultant agrees to accept a total Design Fee, the amount of which is set forth in Exhibit C (the "Design Fee"). The Design Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultant(s) in the performance of all required Design Services for the Project, as set forth in Article 6.3 and as amended by Exhibit A, including all expenses related to management, overhead and any anticipated profit, exclusive of any expenses and anticipated profit for: (1) Pre-Preliminary Design Services, as set forth in Article 6.2; (2) Additional Professional Services, as set forth in Article 6.5; (3) Hazmat Services, as set forth in Article 6.4; (4) Reimbursable Services, as set forth in Article 6.6, and (5) Artwork, as set forth in Article 6.3.11.

7.2.2 Payment of Design Fee: The Design Fee shall be paid to the Consultant as set forth below.

- (a) Design Phase: For the performance of all required services in connection with the preparation of Design Documents for the Project, the Consultant shall be paid seventy-five (75%) of the Design Fee. Payment of this amount shall be in accordance with the percentage breakdown per deliverable set forth below.

<u>Deliverable</u>	<u>Lump Sum Fee</u>
Schematic Design Documents	10% of the Design Fee
Design Development Documents	20% of the Design Fee
Final Design Documents	45% of the Design Fee

- (b) Partial Payments During Design Phase: Partial payments of the lump sum fee per deliverable, as set forth in paragraph (a) above, may be made to the Consultant on a monthly basis, based upon the Commissioner's determination that the Consultant is progressing the required work for the deliverable in a satisfactory fashion and in accordance with the schedule set forth in Exhibit B; provided, however, partial payments for the deliverable may not exceed 50% of the lump sum fee for the same, unless the Consultant submits a draft of the deliverable demonstrating satisfactory progress of the work. Total payment of the lump sum fee per deliverable shall not be made until written acceptance by the Commissioner of the deliverable.
- (c) Construction Phase: For the performance of all required services during construction for the Project, the Consultant shall be paid twenty-five (25%) percent of the Design Fee. Partial payment of this amount shall be in accordance with the percentage of completion of all required services during construction, as determined by the Commissioner.

7.2.3 Additional Professional Services: In the event the Commissioner directs the Consultant to perform Additional Professional Services, as set forth in Article 6.5, payment for such services shall be based upon staffing hours, as set forth in Article 7.3.

7.2.4 Impact of Extension: In the event the term of the Contract is extended, the Design Fee set forth in Exhibit C shall remain in full force and effect during such extension of the Contract term.

### 7.3 Payment for Services Based upon Staffing Hours (Time Card)

7.3.1 Allowance: An Allowance for Services Based Upon Staffing Hours (Time Card) in a not to exceed amount is set forth in Exhibit A. Such Allowance is established for payment for services the Consultant is directed to perform based upon staffing hours (time card), as set forth below. No such services shall be performed by the Consultant, or paid from this allowance, unless expressly authorized in advance in a written directive from the Commissioner.

- (a) Pre-Preliminary Services, as set forth in Article 6.2.
- (b) Additional Professional Services, as set forth in Article 6.5.
- (c) Hazmat Services, as set forth in Article 6.4.

7.3.2 Information from Staffing Plan: In accordance with Article 5.4.3, in the event the Consultant is directed to perform services based upon staffing hours (time card), a Staffing Plan must be established and approved by the Commissioner prior to commencement of the Consultant's services. Such Staffing Plan must specify the items set forth below.

- (a) Required Personnel: The personnel specified in the Staffing Plan shall be considered Assigned Employees for the purpose of payment in accordance with this Article 7.3.
- (b) All Inclusive Hourly Rates: The All Inclusive Hourly Rates for the personnel specified in the Staffing Plan shall be in accordance with Exhibit E. Such All Inclusive Hourly Rates shall apply to all hours during which an Assigned Employee, as described in Paragraph (a) above, performed services for the Project based upon staffing hours (time card), including overtime hours. No increase in such rates shall be provided for services performed during overtime hours. Such All Inclusive Hourly Rates shall be deemed to include: (1) all expenses incurred by the Consultant and/or its Subconsultants in the performance of all required services for the Project based upon staffing hours, (2) all expenses related to management and oversight, including, without limitation, any time spent by principals performing such duties, (3) all expenses related to overhead, and (4) any anticipated profit.

7.3.3 Amount of Payment: For any given week during which an Assigned Employee performed services for the Project based upon staffing hours (time card), payment to the Consultant for such employee's services for that week shall be calculated as follows: Multiply the amount set forth in subparagraph (a) by the number set forth in subparagraph (b).

- (a) All Inclusive Hourly Rate applicable to the Assigned Employee, as set forth in Article 7.3.2 (b) above.
- (b) Total number of hours set forth on time sheets completed by the Assigned Employee for the week in question during which the Assigned Employee actually performed services for the Project based upon staffing hours. This total number of hours shall **NOT** include the following: (1) any hours the Assigned Employee spent commuting; (2) any non-billable hours, as defined in subparagraph (c) below; (3) any hours during which the Assigned Employee performed services for any other project; (4) any hours the Assigned Employee spent performing services for this Project, as set forth in Articles 6.9.1(a) and 6.9.3 hereof, for which the Consultant is not entitled to compensation, and (5) any hours set forth in Article 7.3.4 below.

- (c) Non-billable hours shall be defined as any hours set forth on time sheets completed by the Assigned Employee which have been allocated to any category or function other than services performed for this Project. Non-billable hours shall include without limitation: (1) compensated absence time, including without limitation vacation time, sick time, personal time and holidays; (2) performance of indirect administrative tasks, or (3) any other time keeping category consistent with standard accounting practices.

7.3.4 No Payment for Principals: The Consultant shall not be entitled to payment for a principal's time performing oversight or management duties. This prohibition on payment for a principal's time shall not apply if the following criteria are met: (1) such principal is qualified to perform services for the Project in accordance with one of the titles set forth in Exhibit F, and (2) such principal is included in the approved Staffing Plan for such title.

7.3.5 Requisitions: For any given week(s) for which the Consultant is requesting payment for services performed by an Assigned Employee based upon staffing hours (time card), the Consultant shall submit the documentation set forth below.

7.3.6 Change Order Services: The Consultant may be directed to perform services pursuant to a change order issued in accordance with Article 17. If so specified in the change order, the Consultant agrees to perform the services specified therein in accordance with all terms and conditions applicable to the performance of Additional Professional Services, and payment for the same, as set forth herein. Such change order shall specify an upset amount for the performance of the Consultant's services.

7.3.7 Increases in All Inclusive Hourly Rates: The All Inclusive Hourly Rates set forth in Exhibit E shall be subject to increases as provided for herein. The first such increase shall be made at the beginning of the calendar year which is at least three years after the commencement of the Contract, i.e., in the month of January of the year which is at least three full years after the date of the advice of award. Subsequent increases shall be made on a yearly basis at the beginning of each calendar year for the remainder of the contract term or any extension thereof. Such increases shall be based upon any increase in the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). If the Index declines or shows no increase, rates shall not be increased. Any increases in the All Inclusive Hourly Rates shall be applied on a prospective basis only.

#### 7.4 Payment for Hazmat Services

7.4.1 Allowance: An Allowance for Hazmat Services in a not to exceed amount is set forth in Exhibit A. Such Allowance is established for payment for Hazmat Services the Consultant is directed to perform, as set forth in Article 6.4. No such services shall be performed by the Consultant, or paid from this allowance, unless expressly authorized in advance in a written directive from the Commissioner.

7.4.2 Amount of Payment: The amount of payment for the performance of Hazmat Services by the Subconsultant engaged by the Consultant shall be calculated in accordance with all of the terms and conditions set forth in Article 7.3. above.

7.4.3 Payment for Laboratory Services: Payment for required laboratory services in connection with Hazmat Services shall be in accordance with the Schedule of Unit Prices for Laboratory Services set forth in Exhibit G.

7.4.4 Consultant's Mark-up: All payments for (1) the performance of Hazmat Services by the Subconsultant, and (2) laboratory services in connection with hazmat services shall be subject to a mark-up



of 5% for the Consultant's overhead and profit.

7.4.5 Increases in Unit Prices: The Unit Prices for Laboratory Services set forth in Exhibit G shall be subject to increases as provided for herein. The first such increase shall be made at the beginning of the calendar year which is at least three years after the commencement of the Contract, i.e., in the month of January of the year which is at least three full years after the date of the advice of award. Subsequent increases shall be made on a yearly basis at the beginning of each calendar year for the remainder of the contract term or any extension thereof. Such increases shall be based upon any increase in the Employment Cost Index for Professional, Specialty and Technical Occupations, published by the U.S. Department of Labor, Bureau of Labor Statistics (the "Index"). If the Index declines or shows no increase, unit prices shall not be increased. Any increases in Unit Prices for Laboratory Services shall be applied on a prospective basis only.

## 7.5 Payment for Reimbursable Services

7.5.1 Allowance: An Allowance for Reimbursable Services in a not to exceed amount is set forth in Exhibit A. Such Allowance is established for payment for Reimbursable Services the Consultant is directed to provide, as set forth in Article 6.6. No Reimbursable Services shall be provided by the Consultant, or reimbursed hereunder, unless expressly authorized in a written directive from the Commissioner. For Reimbursable Services in excess of \$150, such written authorization must be provided in advance of the expenditure.

7.5.2 Procurement: With respect to Reimbursable Services, the Consultant shall utilize the method of procurement directed by the Commissioner. If so directed by the Commissioner, the Consultant shall conduct a competitive bid and/or proposal process for the specified Reimbursable Service. In general, such competitive process will be required if the cost of the specified Reimbursable Service exceeds \$5,000.

7.5.3 Form of Payment: With respect to Reimbursable Services, the Consultant shall utilize the form of payment directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with one of the following methods: (a) lump sum; (b) unit price, or (c) actual cost; except as otherwise provided in Article 7.5.4 below.

7.5.4 Long Distance Travel: Payment for long distance travel, as set forth in Article 6.6.1, shall be in accordance with the normal travel allowances of the City of New York for its own employees as provided in Comptroller's "Directive #6, Travel, Meals, Lodging and Miscellaneous Agency Expenses."

7.5.5 Consultant's Mark Up: The Consultant shall be entitled to a mark-up of 5% for its overhead and profit with respect to Reimbursable Services; provided, however, the Consultant shall **NOT** be entitled to any mark-up with respect to (1) long distance travel, and (2) filing fees.

7.5.6 Payment: Payment for Reimbursable Services shall be as set forth below.

- (a) if the authorized form of payment is lump sum, payment shall be based upon the percentage of completion of all required services.
- (b) if the authorized form of payment is unit price, payment shall be based upon the number of completed units.
- (c) if the authorized form of payment is actual cost, payment shall be based upon the actual and reasonable cost, as indicated by receipted bills or any other data required by the Commissioner.

7.5.7 Requests for payment for Reimbursable Services shall be accompanied by receipted bills

or any other data required by the Commissioner.

## 7.6 Payment for Artwork

7.6.1 Allowance: An Allowance for Artwork in a not to exceed amount is set forth in Exhibit A. Such Allowance is established for payment for services the Consultant is directed to provide, as set forth in Article 6.3.11, for the inclusion of artwork in the Project in accordance with Chapter 9, Section 224, of the New York City Charter. No such services shall be provided by the Consultant, or paid from this allowance, unless expressly authorized in advance in a written directive from the Commissioner.

7.6.2 Amount of Payment: The amount of payment for the services of the artist engaged by the Consultant shall be calculated in accordance with the terms and conditions of the contract between the Consultant and the artist. Such contract is subject to prior written approval by the Commissioner.

7.6.3 Consultant's Mark-up: For its services in connection with the artwork, the Consultant shall be entitled to a fee, the amount of which shall be five (5%) percent of the total actual cost of the artwork. Such fee shall be based upon the percentage of completion of all required services in connection with the artwork and shall be in addition to the Design Fee set forth in Article 7.2.

## 7.7 Requisitions for Payment

7.7.1 Requisitions for payment may be submitted as the work progresses, but not more often than once a month. Requisitions shall be in the authorized form and shall set forth the services performed by the Consultant and the total amount of partial payment requested. The total amount of partial payment requested shall be broken down into the following categories, depending on the services performed: (1) Payment for Design Services through a Design Fee; (2) Payment for Services Based upon Staffing Hours (Time Card); (3) Payment for Hazmat Services; (4) Payment for Reimbursable Services, and (5) Payment for Artwork. The Consultant shall submit one original and three (3) copies of each requisition for payment.

7.7.2 Requisitions for payment shall be accompanied by the documentation set forth below.

(a) Project Progress Report: The Consultant shall submit a statement indicating the percentage of completion of all required services for the Project.

(b) Payment for Design Services Through Design Fee:

- (1) For payment requisitions for any portion of the Design Fee during the design phase (i.e., for the preparation of design documents), the Consultant shall state that the Commissioner's written approval of the required deliverable(s) has been obtained, or the payment is otherwise authorized in accordance with Article 7.2.3 (b).
- (2) For payment requisitions for any portion of the Design Fee during the construction phase (i.e., for services during construction), the Consultant shall submit a statement indicating the percentage of completion of such services.

(c) Payment for Services Based upon Staffing Hours (Time Card): For any given period for which the Consultant is requesting payment for services based upon staffing hours, the Consultant shall submit the documentation set forth below:

- (1) name and title of the Assigned Employee, as defined in Article 7.3.2 (a).
- (2) Commissioner approval of the Assigned Employee, either approved Staffing Plan in accordance with Article 5.4 or documentation approving the Assigned

Employee as a replacement.

- (3) All Inclusive Hourly Rate applicable to the Assigned Employee, as set forth in Article 7.3.2 (b) above.
  - (4) number of hours worked each day by the Assigned Employee for the week(s) in question during which the Assigned Employee actually performed services for the Project based upon staffing hours.
  - (5) detailed time sheets completed by the Assigned Employee for the week(s) in question. Such detailed time sheets shall reflect all hours of service by the Assigned Employee, including without limitation: (1) actual hours during which the employee performed services for this Project based upon staffing hours; (2) actual hours during which the employee performed services for this Project covered under the Design Fee; (3) actual hours during which the employee performed services for other projects; (4) non-billable hours, as defined in Article 7.3.3 (c) above; (5) actual hours, if any, during which the Assigned Employee spent performing services for this Project, as set forth in Articles 6.9.1(a) and 6.9.3, for which the Consultant is not entitled to compensation, and (5) any hours set forth in Article 7.3.4 above.
- (d) Payment for Hazmat Services:
- (1) For any given period for which the Consultant is requesting payment based upon staffing expenses for the performance of Hazmat Services by its Subconsultant, the Consultant shall submit the documentation set forth in Paragraph (c) above.
  - (2) For any given period for which the Consultant is requesting payment for laboratory services in connection with Hazmat Services, the Consultant shall submit: (1) a report describing the number and type of laboratory services performed; (2) the applicable unit prices for the laboratory services performed, as set forth in Exhibit G, and (3) documentation from the laboratory specifying the services performed.
- (e) Payment for Reimbursable Services: For any given period for which the Consultant is requesting payment for Reimbursable Services, the Consultant shall submit:
- (1) a statement indicating the Reimbursable Service the Consultant was directed to provide.
  - (2) if the authorized form of payment is lump sum, a current report on the progress of the work, indicating the percentage of completion of all required services.
  - (3) if the authorized form of payment is unit price, a current report indicating the number of completed units.
  - (4) if the authorized form of payment is actual cost, receipted bills or any other data required by the Commissioner.
- (f) Payment for Artwork: For any given period for which the Consultant is requesting payment for artwork, the Consultant shall submit a statement indicating the percentage of completion of all required services by the artist, as well as the total actual cost of the artwork to date.

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

7.7.4 Following the receipt of a satisfactory requisition for payment, the Commissioner will

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

#### 7.8 Prompt Payment

7.8.1 The prompt payment provisions of the PPB Rules in effect at the time of the solicitation for this Contract shall be applicable to payments made under this Contract. 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.

7.8.2 The Consultant must submit a proper invoice to receive payment.

7.8.3 Determination of interest due shall be made in accordance with the PPB Rules and General Municipal Law 13-a.

7.8.4 If the Consultant is paid interest, the proportionate share of that interest shall be forwarded by the Consultant to its Subconsultant.

#### 7.9 Final Payment

7.9.1 The last and final payment to the Consultant shall become due and payable upon written acceptance by the Commissioner of all required services hereunder and the submission by the Consultant of all required records and documentation in connection with the Project.

7.9.2 The acceptance by the Consultant, its successors or its assignees of the final payment under this Contract, whether by voucher, judgment of any court of competent jurisdiction or any other administrative means, including final payment in the event of termination, shall constitute and operate as a general release to the City from any and all claims of and liability to the Consultant arising out of the performance of this Contract.

### ARTICLE 8 Time Provisions

8.1 Term of Contract: This Contract shall commence as of the date of the written advice of award and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services hereunder.

8.2 Time Frame for Design Documents: The time frame for completion of all required services for the preparation of Design Documents shall be the number of consecutive calendar days (CCDs) set forth in Exhibit A. Such time frame shall commence as of the date of the written advice of award and shall not include any review time by agencies whose approval the Consultant is required to obtain. Such time frame does not include services during construction.

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

### ARTICLE 9 Ownership of Documents

9.1 Any and all material, records or documents prepared by or for the Consultant pursuant to this Contract, including, but not limited to, notes, designs, drawings, tracings, specifications, estimates, reports, schedules, charts, graphs, maps, and/or photographs, shall become the property of the City upon their acceptance by the Commissioner or upon termination of services of the Consultant. During the term of this Contract and at any time within seven years thereafter, the Consultant shall, upon demand, promptly deliver such material, records or documents to the Commissioner, or make such records available to the Commissioner or his authorized representative for review and reproduction at such place as may be designated by the Commissioner. Thereafter, the City may utilize such material, records or documents in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable without employment of or additional compensation to the Consultant.

9.2 Should such documents prepared under this Contract be re-used by the City for other than the Project originally created, it is understood that the Consultant bears no responsibility whatsoever for such re-use except in those instances where he is re-employed for re-use of the documents.

#### ARTICLE 10 Patented and Proprietary Items

10.1 The Consultant shall not, without the prior written approval of the Commissioner, specify for the Project, or necessarily imply the required use of any article, product, material, fixture or form of construction, the use of which is covered by a patent, or which is otherwise exclusively controlled by a particular firm or group of firms.

10.2 The Consultant shall be liable to and hereby agrees to defend, indemnify and hold harmless the City against all claims against the City for infringement of any copyright or patent rights of systems, graphs, charts, designs, drawings or specifications furnished by the Consultant in the performance of this Contract.

#### ARTICLE 11 Insurance

11.1 Required Insurance: From the date the Consultant is first ordered to commence work and throughout the term of this Contract, the Consultant shall effect and maintain, and shall cause each Subconsultant to effect and maintain, the types and amounts of insurance set forth below. The Consultant shall include in all its contracts with Subconsultants a requirement that they effect and maintain the types and amounts of insurance set forth below.

11.1.1 Comprehensive General Liability Insurance: The Consultant shall provide a policy of comprehensive general liability insurance in the minimum amount of \$1,000,000 per occurrence (combined single limit for bodily injury and property damage), \$2,000,000 aggregate. Such policy shall be in the Consultant's name, shall name the City of New York as an additional insured thereunder. Such policy shall protect the Consultant and the City of New York from claims for property damage and/or bodily injury, including accidental death, which may arise from operations under this Contract, whether such operations are performed by the Consultant or anyone directly or indirectly employed by him/her. The coverage provided must be "occurrence" based; "claims made" coverage will not be accepted. The general liability insurance policy provided shall include the following endorsements:

- (a) The City of New York, together with its officials and employees, is an Additional Insured under this policy.
- (b) Notice under the Policy to the Additional Insured shall be addressed to the Commissioner of the Department of Design and Construction, 30-30 Thomson Avenue, Long Island City, New York 11101.
- (c) Notice of Accident shall be given to the Company by the Insured within one hundred

twenty (120) days after notice of such accident has been sent to the Commissioner of the Department of Design and Construction.

- (d) Notice of Claim shall be given to the Company within one hundred twenty (120) days after such notice shall be filed with the Comptroller of the City of New York.
- (e) Notice of Claim to the Company by the Insured of an accident or claim on the site shall constitute notice by the City to the Company.
- (f) Notice of Cancellation of Policy as set forth in Article 11.2.4 below.
- (g) The presence of representatives of the City at the Site shall not invalidate this policy.
- (h) Violation of any of the terms of any other policy issued by the Company to the Insured shall not invalidate this policy or reduce the Insured's liability.

11.1.2 Professional Liability Insurance: The Consultant shall provide Professional Liability Insurance covering as insured the Consultant in the minimum amount of \$1,000,000 per claim, \$3,000,000 aggregate. Subconsultants performing professional services shall also provide such coverage in the minimum amount of \$1,000,000 per claim, \$3,000,000 aggregate. The professional liability insurance policy(s) provided shall include the following endorsements:

- (a) Notice of Cancellation of Policy as set forth in Article 11.2.4 below.
- (b) Violation of any of the terms of any other policy issued by the Company to the Insured shall not invalidate this policy or reduce the Insured's liability.

11.1.3 Worker's Compensation Insurance: The Consultant shall provide Worker's Compensation Insurance in accordance with the Laws of the State of New York on behalf of all employees providing services under this Contract.

11.1.4 Employers Liability Insurance: The Consultant shall provide Employers Liability Insurance in the minimum amount of \$1,000,000 per occurrence. Such policy shall provide compensation due to bodily injury by accident or disease sustained by any employee of the insured arising out of or in the course of his/her employment by the insured.

## 11.2 General Requirements for Insurance Policies

11.2.1 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-7 or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations.

11.2.2 All required Insurance policies shall be in a form acceptable to the City and shall contain no exclusions or endorsements which are not acceptable to the City.

11.2.3 The omission of any endorsements or clauses required by this Article will be considered cause for rejection of the policy.

11.2.4 All required policies shall be endorsed to provide as follows: "This policy shall not be canceled, terminated, modified or changed by the Insurance Company unless at least thirty (30) Days prior written notice is sent to the Named Insured by Certified Mail and also sent by Registered Mail to both the Commissioner and to Comptroller's Office, attn: Office of Contract Administration, Municipal Building, Room 835, New York, New York 10007."

11.2.5 The Consultant shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the City of New York is an insured under the policy.

11.2.6 In his sole discretion, the Commissioner may, subject to the approval of the Comptroller and the Law Department, accept letters of credit and/or custodial accounts in lieu of required Insurance.

### 11.3 Proof of Insurance

11.3.1 On or before the commencement of work pursuant to this Contract, the Consultant shall submit, and shall cause each Subconsultant to submit, to the Commissioner two certificates of Insurance for all policies required under this contract, together with originals of all endorsements required hereunder.

11.3.2 Certificates confirming renewals of Insurance shall be submitted not less than thirty (30) days prior to the expiration date of coverage until all operations under this Contract have been completed.

11.3.3 The Consultant shall be responsible for providing continuous insurance coverage as required by this contract and shall be authorized to provide services hereunder only during the effective period of all required coverage.

11.3.4 The Consultant shall promptly notify the Commissioner of any accidents causing bodily injury or property damage arising in the course of operations under this Contract.

11.3.5 Pursuant to Sections 57 and 220 of the New York State Workers' Compensation Law, the Consultant has submitted proof of workers' compensation and disability benefits coverage to the Department.

## ARTICLE 12 Indemnification

12.1 If persons or property of the City, or of others sustain loss, damage or injury resulting, either directly or indirectly from the acts, conduct, omissions, negligence, carelessness or lack of good faith of the Consultant or its officers, agents, employees, or any person, firm, company, agent or others engaged by the Consultant hereunder, in their performance of this Agreement, or from his or their failure to comply with any of the provisions of this Contract or of law, the Consultant shall indemnify and hold the City harmless from any and all claims and judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason thereof.

12.2 The Consultant shall indemnify and hold harmless the Commissioner and the City, each officer, agent and employee of the Commissioner and the City, against all claims against any of them for bodily injury or wrongful death or property damage arising out of the negligent performance of services, including professional services, or caused by any error, omission or negligent act of the Consultant or anyone employed by the Consultant, in the performance of this Contract.

12.3 The provisions of this Article shall not be deemed to create any right of action in favor of third parties against the Consultant or the City.

12.4 The rights and remedies of the City provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or by this Contract.

12.5 In the event that any City property is lost or damaged, except for normal wear and tear, then the City shall have the right to withhold further payments hereunder for the purpose of set off, in sufficient sums to cover such loss or damage.

## ARTICLE 13 Consultant Independent Contractor

13.1 The relationship of the Consultant to the City shall be that of independent contractor, and the Consultant shall have no authority to bind the City in any way with third parties.

13.2 Nothing contained herein shall be deemed to give any third party any claim or right of action against the City or the Consultant beyond such as may otherwise exist without regard to this Contract.

#### ARTICLE 14 Suspension or Termination of Performance

14.1 Suspension of Performance: The Commissioner may at any time, and for any reason, direct the Consultant to stop work under this Contract for a period of time. Such direction shall be in writing and shall specify the period during which work shall be stopped. The Consultant shall resume work upon the date specified in such direction, or upon such other date as the Commissioner may thereafter specify in writing. The period during which work shall have been stopped shall be deemed added to the time for performance. Stoppage of work under this Article shall not give rise to any claim against the City.

14.2 Termination Without Cause: The Commissioner may at any time, and for any reason, terminate this contract by written notice to the Consultant specifying the termination date, which shall be not less than seven (7) days from the date such notice is given. In the event of such termination, the Consultant shall be paid such amount as shall compensate him for the portion of the work satisfactorily performed prior to the termination date. Such amount shall be fixed by the Commissioner, after consultation with the Consultant, and shall be subject to audit by the Comptroller. Termination under this Section shall not give rise to any claim against the Commissioner or the City for damages or for compensation in addition to that provided hereunder.

14.3 Termination for Cause: In the event that: (1) the Consultant shall not for any reason or through any cause, have completed performance within the time fixed for performance hereunder; or (2) Any representation or warranty made hereunder shall prove to be untrue in any material respect; or (3) grounds for cancellation of the contract shall arise; or (4) the Consultant shall otherwise be in default hereunder; or (5) the Commissioner shall give the Consultant written notice that in his opinion the conduct of the Consultant is such that the interests of the City are likely to be impaired or prejudiced, stating the facts upon which such opinion is based; then the Commissioner may, upon written notice to the Consultant, immediately terminate this contract for cause. Upon such termination, the Consultant shall be entitled to payment of such amount, to be determined by the Commissioner and subject to audit by the Comptroller, as shall fairly compensate him for the work satisfactorily performed to the termination date, provided, however, that (1) no allowance shall be included for termination expenses; and (2) the Commissioner shall deduct from such amount and from any amount due and payable to the Consultant to the termination date, but withheld or not paid, the total amount of additional expenses incurred by the City in order to satisfactorily complete the work required to be performed by the Consultant under this contract including the expense of engaging another architect or engineer for this purpose. If such additional expense shall exceed the amounts otherwise due and payable to the Consultant hereunder, the Consultant shall pay the City the full amount of such excess expense incurred by the City. No amount shall be paid to the Consultant under this Article until the work required to be performed under this contract has been satisfactorily completed by others.

#### ARTICLE 15 - Resolution of Disputes

15.1 All disputes between the City and the Contractor of the kind delineated in this article that arise under, or by virtue of, this Contract shall be finally resolved in accordance with the provisions of this article and the PPB Rules. The procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.



15.1.1 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 New York State) relating to proprietary rights in computer software.

15.1.2 This article shall apply only to disputes about the scope of work delineated by the Contract, the interpretation of Contract documents, the amount to be paid for Extra Work or disputed work performed in connection with the Contract, the conformity of the Contractor's Work to the Contract, and the acceptability and quality of the Contractor's Work; such disputes arise when the Engineer (defined in the contract) makes a determination with which the Contractor disagrees.

15.2 All determinations required by this article shall be made in writing 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.

15.3 During such time as any dispute is being presented, heard, and considered pursuant to this article, the Contract terms shall remain in force and the Contractor shall continue to perform Work as directed by the ACCO or the Engineer. Failure of the Contractor to continue Work as directed shall constitute a waiver by the Contractor of its claim.

15.4 Presentation of Disputes to Commissioner. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Commissioner 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 the Contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within thirty (30) Days after receipt of the detailed written submission comprising the complete Notice of Dispute, the Engineer shall submit to the Commissioner all materials he or she deems pertinent to the dispute. Following initial submissions to the Commissioner, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Commissioner whose decision shall be final. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

15.4.1 Commissioner Inquiry. The Commissioner shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor, the ACCO, and the Engineer to resolve the issue by mutual consent prior to reaching a determination. The Commissioner 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 Commissioner's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the disputed presented, whether or not the Commissioner participated therein. The Commissioner may or, at the request of any party to the dispute, shall compel the participation of any other Contractor with a Contract related to the Work of this Contract, and that Contractor shall be bound by the decision of the Commissioner. Any Contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this article as the Contractor initiating the dispute.

15.4.2 Commissioner 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 Commissioner shall make his or her determination and shall deliver or send a copy of such determination to the Contractor, the ACCO, and Engineer, together with a statement concerning how the decision may be appealed.

15.4.3 Finality of Commissioner Decision. The Commissioner's decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board pursuant to this article. The City may not take a petition to the Contract Dispute Resolution Board. However, should the Contractor take such a petition, the City may seek, and the Contract Dispute Resolution Board may render, a determination less favorable to the Contractor and more favorable to the City than the decision of the Commissioner.

15.5 Presentation of Dispute to the Comptroller. Before any dispute may be brought by the Contractor to the Contract Dispute Resolution Board, the Contractor must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

15.5.1 Time, Form, and Content of Notice. Within thirty (30) days of its receipt of a decision by the Commissioner, the Contractor shall submit to the Comptroller and to the Commissioner a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief Written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the written decision of the Commissioner; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Commissioner, except at the request of the Comptroller.

15.5.2 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 Commissioner in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Commissioner except at the request of the Comptroller.

15.5.3 Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in section 7-201 and 7-203 of the New York City 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 the Contractor. Willful failure of the Contractor to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

15.5.4 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 Article 15.5.3 to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the Contractor and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all materials. The Contractor may not present its petition to the Contract Dispute Resolution Board until the period for investigation and compromise delineated in Article 15.5.4 has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the Contract between the parties.

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

15.6.1 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 article as may be necessary in the execution of the Contract Dispute Resolution Board's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

15.6.2 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

15.6.3 A person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH with appropriate background to act as decision-makers in a dispute. Such individual 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 represents persons, companies, or organizations having disputes with the City.

15.7 Petition to the Contract Dispute Resolution Board. In the event the claim has not been settled or adjusted by the Comptroller within the period provided in this article, the Contractor, within thirty (30) days thereafter, may petition the Contract Dispute Resolution Board to review the Commissioner's determination.

15.7.1 Form and Content of Petition by Contractor. The Contractor shall present its dispute to the Contract Dispute Resolution Board in the form of a petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Contractor contends the dispute was wrongly decided by the Commissioner; (ii) a copy of the written Decision of the Commissioner, (iii) copies of all materials submitted by the Contractor to the Agency; (iv) a copy of the written decision of the Comptroller, if any, and (v) copies of all correspondence with, or written material submitted by the Contractor, to the Comptroller. The Contractor shall concurrently submit four (4) complete sets of the Petition: one set to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division) and three (3) sets to the Contract Dispute Resolution Board at OATH's offices with proof of service on the Corporation Counsel. In addition, the Contractor shall submit a copy of the written statement of the substance of the dispute, cited in (i) above, to both the Commissioner and the Comptroller.

15.7.2 Agency Response. Within thirty (30) Days of its receipt of the petition by the Corporation Counsel, the Agency shall respond to the brief written statement of the Contractor and make available to the Contract Dispute Resolution Board all material it submitted to the Commissioner and Comptroller. Three (3) complete copies of the Agency response shall be provided to the Contract Dispute Resolution Board and one to the Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon consent of the parties, for an initial period of up to thirty (30) Days.

15.7.3 Further Proceedings. The Contract Dispute Resolution Board shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The Contract Dispute Resolution Board shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the Contract Dispute Resolution Board. The Contract Dispute Resolution Board, 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 Contract Dispute Resolution Board, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

15.7.4 Contract Dispute Resolution Board Determination. Within forty-five (45) Days of the conclusion of all written submissions and oral arguments, the Contract Dispute Resolution Board shall render a written decision resolving the dispute. In an unusually complex case, the Contract Dispute Resolution Board may render its decision in a longer period, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The Contract Dispute Resolution Board's decision must be consistent with the terms of the Contract. Decisions of the Contract Dispute Resolution Board shall only resolve matters before the Contract Dispute Resolution Board and shall not have precedential effect with respect to matters not before the Contract Dispute Resolution Board.

15.7.5 Notification of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board shall send a copy of its decision to the Contractor, the ACCO, the Engineer, the Comptroller, the Corporation Counsel, the Director of the Office of Construction, and the PPB. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The Required Payment Date shall be thirty (30) Days after the date the parties are formally notified of the Contract Dispute Resolution Board's decision.

15.7.6 Finality of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board's decision shall be final and binding on all parties. Any party may seek review of the Contract Dispute Resolution Board's decision solely in the form of a challenge, filed within four (4) months of the date of the Contract Dispute Resolution Board'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 Laws and Rules. Such review by the court shall be limited to the question of whether or not the Contract Dispute Resolution Board'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 Contract Dispute Resolution Board in accordance with this article.

15.8 Any termination, cancellation, or alleged breach of the Contract prior to or during the pendency of any proceedings pursuant to this article shall not affect or impair the ability of the Commissioner or Contract Dispute Resolution Board to make a binding and final decision pursuant to this article.

## ARTICLE 16 Consultant's Report Information

16.1 A copy of each report submitted by the Consultant to any City official or to any officer, employee, agent or representative of a City department, agency, commission or body or to any corporation, association or entity whose expenses are paid in whole or in part from the City treasury shall be furnished to the Commissioner of the department to which such report was submitted or, if not a City department, then to the chief controlling officer or officers of such other office or entity. A copy of such report shall also be furnished to the Director of the Mayor's Office of Construction for matters related to construction or to the Director of the Mayor's Office of Operations for all other matters.

## ARTICLE 17 Contract Changes

17.1 Changes may be made to this contract only as duly authorized by the Agency Chief Contracting Officer or his or her designee. Consultants deviating from the requirements of the Contract without a duly approved change order document, or written contract modification or amendment, do so at their own risk. All such changes, modifications and amendments will become a part of the original contract. Work so ordered must be performed by the Consultant.

17.2 Contract changes will be made only for work necessary to complete the work included in the original scope of the contract, and for non-material changes to the scope of the contract. Changes are not permitted for any material alteration in the scope of work. Contract changes may include any contract revision deemed necessary by the Agency Chief Contracting Officer.

17.3 The Consultant may be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract work is necessarily delayed by a change order, the Consultant may be entitled to an extension of time for performance.

17.4 Where the cost of the change order has been negotiated in the absence of established cost history, the costs are subject to verification.

17.5 All payments for change orders are subject to pre-audit by the Engineering Audit Officer and may be post-audited by the Comptroller. If the audits reveal that the Consultant'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 of the change order. This remedy is not exclusive and in addition to all other rights and remedies of the City.

17.6 Any contract increase which cumulatively exceeds the greater of 10% of the Contract Price or \$100,000 shall be justified in writing by the Agency Chief Contracting Officer and approved in writing by the Office of Construction. Any contract amendment which either amends a unit price, cancels required units, or adds a new type of unit item to the Contract must be approved in writing by the Agency Chief Contracting Officer.

#### ARTICLE 18 Accounting Records

18.1 The Consultant shall maintain complete, detailed and accurate cost and accounting records, in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred under this Contract. During the term of this Contract and at any time within seven years thereafter, the Consultant shall make such records available to the City or its authorized representatives for review and audit at such place or places as may be designated by the Commissioner. In the event the Commissioner authorizes the Consultant to retain the services of Subconsultants for which the Consultant will be entitled to reimbursement hereunder, the Consultant agrees to include in all its contracts with Subconsultants a requirement that they maintain complete, detailed and accurate cost and accounting records as to all their costs relating to the services and materials furnished by them under such contracts and that during the term of this Contract and at any time within seven years thereafter, if required by the Commissioner, they will make such records available to the City or its authorized representatives for review and audit at such places as may be designated by the Commissioner.

18.2 In the event all or any part of such records are not maintained by the Consultant or its Subconsultants, or made available to the City as provided, herein, any item not supported by reason of the insufficiency or unavailability of such records shall at the election of the Commissioner or the Comptroller, be disallowed and, if payment therefor has already been made, the Consultant, upon demand, shall refund to the City the amounts so disallowed. Payments to the Consultant or approval by the Commissioner of any application for payment submitted by the Consultant, shall in no way affect the Consultant's obligation hereunder or the right of the City to obtain a refund of any payment to the Consultant which is in excess of that to which it was lawfully entitled.

#### ARTICLE 19 Audit and Examination

19.1 This Contract and all payments hereunder shall be subject to audit and examination by the Engineering Audit Officer of DDC and post-audit by the Comptroller of the City in accordance with Law.

#### ARTICLE 20 Monies Withheld

20.1 When the Commissioner shall have reasonable grounds for believing that: (1) the Consultant will be unable to perform this contract fully and satisfactorily within the time fixed for performance; or (2) a meritorious claim exists or will exist against the Consultant or the City arising out of the negligence of the Consultant or the Consultant's breach of any provision of this contract; then the Commissioner or the Comptroller may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by the City for such period as it may deem advisable to protect the City against any loss and may, after written notice to the Consultant, be applied in satisfaction of any claim herein described. This provision is intended solely for the benefit of the City, and no person shall have any right against the Commissioner or claim against the City by reason of the Commissioner's failure or refusal to withhold monies. No interest shall be payable by the City on any amounts withheld under this provision. This provision is not intended to limit or in any way prejudice any other right of the City.

#### ARTICLE 21 Assignments

21.1 The Consultant shall not assign, transfer, convey or otherwise dispose of this Contract, or his right to execute it, or his right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this contract, unless the previous written consent of the Commissioner shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments.

21.2 Such assignment, transfer, or conveyance shall not be valid until filed in the office of the Department of Design and Construction and of the Treasurer with the written consent of the Commissioner endorsed thereon or attached thereto.

21.3 Failure to obtain the previous written consent of the Commissioner to such an assignment, transfer or conveyance, shall justify, at the option of the Commissioner, the revocation and annulment of this Contract. The City shall thereupon be relieved and discharged from any further liability and obligation to the Consultant, his assignees or transfers, and the Consultant and his assignees shall forfeit and lose all monies theretofore earned under the Contract, except so much as may be required to pay the Consultant's employees; provided, however, that nothing herein contained shall be construed to hinder, prevent or affect an assignment by the Consultant for the benefit of creditors made pursuant to the statutes of the State of New York.

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

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

#### ARTICLE 22 Consultant's Performance

22.1 The Consultant shall be liable to the City for all losses, expenses and damage caused by the failure of the Consultant properly to perform its obligations under this Agreement and the Consultant shall not be entitled to any compensation for services or reimbursement for costs or expenses with respect to any such

obligations not properly performed by it hereunder.

#### ARTICLE 23 Claims - Limitation of Action

23.1 No action shall be maintained by the Consultant, his successors or assigns, against the City on any claim based upon or arising out of this Contract unless such action shall be commenced within six (6) months after the date of filing of the voucher for final payment hereunder in the office of the Comptroller, or within six (6) months of the termination or conclusion of this contract, or within six (6) months after the accrual of the cause of action, whichever is earliest.

#### ARTICLE 24 No Claim Against Officer, Agents or Employees

24.1 The Consultant agrees to 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.

24.2 The Consultant shall require each Subconsultant to the Consultant to agree in his contract not to make any claim against the City, its officers, agents or employees, by reason of such contract, or any acts or omissions of the Consultant.

24.3 Nothing in this contract shall be construed to give any person other than the City and the Consultant any legal or equitable right, remedy or claim under this contract; but it shall be held to be for the sole and exclusive benefit of the City and the Consultant.

#### ARTICLE 25 Notices

25.1 Except as otherwise provided herein, any notice, approval, acceptance, request, bill, demand or statement hereunder from either party to the other shall be in writing and shall be deemed to have been given when either delivered personally or deposited in a U.S. mail box in a postage-prepaid envelope, addressed to the other party. Either party may at any time change such address by delivering or mailing, as aforesaid, to the other party a notice stating the change and the changed address.

#### ARTICLE 26 Investigations

26.1 The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (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.

26.1.1 If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, 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 of New York, or;

26.1.2 If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental

agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City then;

26.1.3 The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon no 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.

26.1.4 If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 26.3 below without the City incurring any penalty or damages for delay or otherwise.

26.2 The penalties which may attach a final determination by the commissioner or agency head may include but shall not exceed:

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

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

26.3 The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs 26.3.1 and 26.3.2 below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs 26.3.3 and 26.3.4 below in addition to any other information which may be relevant and appropriate;

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

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

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

26.3.4 The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 26.2 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the



hearing called for in 26.1.3 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

#### 26.4 Definitions Used in this Article

- 26.4.1 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- 26.4.2 The term "person" as used herein 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.
- 26.4.3 The term "entity" as used herein 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.
- 26.4.4 The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

26.5 In addition to and notwithstanding any other provision of this agreement the Commissioner or Agency Head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event consultant fails to promptly report in writing to the Commissioner of Investigation of the City of New York 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 agreement by the consultant, or affecting the performance of this contract.

#### ARTICLE 27 Unlawful Provisions

27.1 If this contract contains any unlawful provisions, not an essential part of the contract and which appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall upon the application of either party be stricken from the contract without affecting the binding force of the contract as it shall remain after omitting such provision.

#### ARTICLE 28 Modification

28.1 This Contract may be modified from time to time in a writing signed by both parties in order to carry out and complete more fully and perfectly the services agreed to be performed under this Contract; provided, however, in no event shall such modification exceed the cost limitation approved by the Office of Management and Budget.

#### ARTICLE 29 Errors

29.1 If this Contract contains any errors, inconsistencies, ambiguities or discrepancies, including typographical errors, the Consultant shall request a clarification of same by writing to the Commissioner whose decision shall be binding upon the parties.

#### ARTICLE 30 Representations, Warranties and Affirmations

30.1 Procurement of Agreement: The Consultant represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Consultant further represents and warrants that no payment, gift or thing of value has been made, given or

promised to obtain this or any other agreement between the parties. The Consultant makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

30.1.1 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid hereunder and the Consultant shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City for falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided for by law or pursuant to this Agreement.

30.2 Conflict of Interest: The Consultant represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Consultant represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

30.3 Fair Practices: The Consultant and each person signing on behalf of the Consultant represents and warrants and certifies, under penalty of perjury, that to the best of its knowledge and belief:

30.3.1 The prices in this contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any competition;

30.3.2 Unless otherwise required by law, the prices which have been quoted in this contract and on the proposal submitted by the Consultant have not been knowingly disclosed by the Consultant prior to the proposal opening, directly or indirectly, to any competitor; and

30.3.3 No attempt has been made or will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

30.3.4 The fact that the Consultant (1) has published price lists, rates, or tariffs covering items being procured, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to other customers at the same prices being bid, does not, in itself, constitute a disclosure within the meaning of the above.

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

#### ARTICLE 31 No Discrimination

31.1 As required by New York State Labor Law Section 220 (e), the parties hereto agree as follows:

31.1.1 That in the hiring of employees for performance of work under this contract or any subcontract hereunder neither the Consultant, subcontractor, nor any person acting on behalf of such Consultant or subcontractors shall by reason of race, creed, color 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;

31.1.2 That neither the Consultant, subcontractor, or any person on his 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 or national origin;

31.1.3 That there may be deducted from the amount payable to the Consultant by the City under this contract a penalty of five dollars 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

31.1.4 That this contract may be canceled or terminated by the City and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section of the contract.

31.1.5 The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

31.2 As required by New York City Administrative Code §6-108

31.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a contract with the City or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a contract with the City to refuse to employ or to refuse to continue in any employment any person on account of the race, color, or creed of such person.

31.2.2 It shall be unlawful for any person or any servant, agent, or employee of any person, described in subdivision 31.2.1 above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

31.2.3 Disobedience of the foregoing provisions shall be deemed a violation of a material provision of this contract.

31.2.4 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 shall, upon conviction thereof, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days, or both.

## ARTICLE 32 Equal Employment Opportunity

32.1 This contract is subject to the requirements of Executive Order No. 50 (1980) as revised ("E.O.50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the Consultant agrees that:

32.1.1 The Consultant will not engage in any unlawful discrimination 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;

32.1.2 When it subcontracts, the Consultant will not engage in any unlawful discrimination 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;

32.1.3 The Consultant will state in all solicitations or advertisements for employees placed by or on behalf of the Consultant that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship, or that it is an equal employment opportunity employer;

32.1.4 The Consultant will send to each labor organization or representative or 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; and

32.1.5 The Consultant will furnish all information and reports including an Employment Report before the award of the contract which are required by E. O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Office of Labor Services ("DLS"), and will permit access to its books, records and accounts by DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

32.2 The Consultant understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with the 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 imposition by the Commissioner of any or all of the following sanctions:

- 32.2.1 disapproval of the Consultant;
- 32.2.2 suspension or termination of the contract;
- 32.2.3 declaring the Consultant in default; or
- 32.2.4 in lieu of any of the foregoing sanctions, Director may impose an employment program.

32.3 The Consultant agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000.00 to which it becomes a party, unless exempted by E. O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Consultant 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.

32.4 The Consultant further agrees that it will refrain from entering into any contract or contract modification 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.

### ARTICLE 33 All Prior Written or Oral Agreements Excluded

33.1 The written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to

exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

#### ARTICLE 34 Head Notes and Marginal Notations

34.1 Notations in the margins and headnotes are not part of the contract and are for reference purposes only. They in no way define, limit or describe scope or intent of the article or section of the Agreement nor in any way affect this Agreement.

#### ARTICLE 35 Dust Hazards

35.1 Should a harmful dust hazard be created in performing the work of this contract, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the State of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard, by the Consultant. Failure to comply with this provision after notice shall make this contract void.

#### ARTICLE 36 Participation in an International Boycott

36.1 The Consultant agrees that neither the Consultant nor any substantially-owned affiliated company has participated, is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

36.2 Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Consultant or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.

36.3 The Consultant shall comply in all respect, with the provisions of Section 6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

#### ARTICLE 37 Effective and Binding

37.1 This contract shall neither be binding nor effective unless:

- 37.1.1 Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975 in the event the Executive Order requires such approval; and
- 37.1.2 Certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan; and
- 37.1.3 Approved by the New York State Financial Control Board (Board) pursuant to the New York State Financial Emergency Act for the City of New York, as amended, (the "Act"), in the event regulations of the Board pursuant to the Act require such approval.
- 37.1.4 It has been authorized by the Mayor, and the Comptroller shall have endorsed his certificate, that there remains unexpended and unapplied a balance of the appropriation of funds applicable thereto sufficient to pay the estimated expense of carrying out this agreement.

37.2 The requirements of this section of the contract 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.

#### ARTICLE 38 Choice of Law, Consent to Jurisdiction and Venue

38.1 This Contract shall be deemed to be executed in the City of New York, regardless of the domicile of the Consultant, and shall be governed by and construed in accordance with the laws of the State of New York.

38.2 The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this agreement and intent, the Consultant agrees:

38.2.1 If the City initiates any action against the Consultant in Federal Court or in New York State Court, service or process may be made on the Consultant, either in person, wherever such Consultant may be found, or by registered mail addressed to the Consultant at its address as set forth in this Contract, or to such other address as the Consultant may provide to the City in writing; and

38.2.2 With respect to any action between the City and the Consultant in New York State Court, the Consultant hereby expressly waives and relinquishes any rights it might otherwise have (1) to move to dismiss on grounds of forum non conveniens, (2) to remove to Federal Court; and (3) to move for a change of venue to a New York State Court outside New York County.

38.2.3 With respect to any action between the City and the Consultant in Federal Court located in New York City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

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

38.3 If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

#### ARTICLE 39 Waiver

39.1 Waiver by the City of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of the Contract unless and until the same be agreed to in writing by the Commissioner.

#### ARTICLE 40 All Defenses Reserved

40.1 Each and every defense, right and remedy that the City has under this Contract is not exclusive and it is in addition to and concurrent with all other defenses, right and remedies which the City has under this Contract and which the City otherwise has, will have, or may have under law, equity, or otherwise.

#### ARTICLE 41 MacBride Principles Provisions

41.1 Notice to all Prospective Contractors: Local Law No. 34 of 1991 became effective on September 10, 1991 and added section 6-115.1 to the Administrative Code of the City of New York. The local law provides for certain restrictions on City contracts to express the opposition of the people of the City of New York to employment discrimination practices in Northern Ireland and to encourage companies doing business in Northern Ireland to promote freedom of work place opportunity.

41.2 Pursuant to Section 6-115.1, prospective contractors for contracts to provide goods or services involving an expenditure of an amount greater than ten thousand dollars, or for construction involving an amount greater than fifteen thousand dollars, are asked to sign a rider in which they covenant and represent, as a material condition of their contract, that any business operations in Northern Ireland conducted by the contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor will be conducted in accordance with the MacBride Principles of nondiscrimination in employment.

41.3 Prospective contractors are not required to agree to these conditions. However, in the case of contracts let by competitive sealed bidding, whenever the lowest responsible bidder has not agreed to stipulate to the conditions set forth in this notice and another bidder who has agreed to stipulate to such conditions has submitted a bid within five percent of the lowest responsible bid for a contract to supply goods, services or construction of comparable quality, the contracting entity shall refer such bids to the Mayor, the Speaker or other officials, as appropriate, who may determine, in accordance with applicable law and rules, that it is in the best interest of the city that the contract be awarded to other than the lowest responsible bidder pursuant to Section 313(b)(2) of the City Charter.

41.4 In the case of contracts let by other than competitive sealed bidding, if a prospective contractor does not agree to these conditions, no agency, elected official or the Council shall award the contract to that bidder unless the entity seeking to use the goods, services or construction certifies in writing that the contract is necessary for the entity to perform its functions and there is no other responsible contractor who will supply goods, services or construction of comparable quality at a comparable price.

41.5 In accordance with section 6-115.1 of the Administrative Code of the City of New York, the contractor stipulates that such contractor and any individual or legal entity in which the contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

41.6 For purposes of this section, the following terms shall have the following meanings: "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:

- 41.6.1 increase the representation of individuals from under represented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- 41.6.2 take steps to promote adequate security for the protection of employees from under represented religious groups both at the work place and while traveling to and from work;
- 41.6.3 ban provocative religious or political emblems from the work place;
- 41.6.4 publicly advertise all job openings and make special recruitment efforts to attract applicants from under represented religious groups;
- 41.6.5 establish layoff, recall and termination procedures which do not in practice favor a

- particular religious group;
- 41.6.6 abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- 41.6.7 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;
- 41.6.8 establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- 41.6.9 appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

41.7 The contractor agrees that the covenants and representations in Paragraph 41.5 above are material conditions to this contract. In the event the contracting entity receives information that the contractor who made the stipulation required by this section is in violation thereof, the contracting entity shall review such information and give the contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the entity shall have the right to declare the contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the entity deems proper. In the event of such termination, the contractor shall pay to the entity, or the entity in its sole discretion may withhold from any amounts otherwise payable to the contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another contractor or contractors. In the case of a requirement contract, the contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the contractor. The rights and remedies of the entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the entity has pursuant to this contract or by operation of law.

#### ARTICLE 42 Vendex Questionnaires

42.1 Requirement: Pursuant to Administrative Code Section 6-116.2 and the PPB Rules, the Consultant may be obligated to complete and submit VENDEX Questionnaires. Generally, if this contract is \$100,000 or more, or if this contract when added to the sum total of all contracts, concessions and franchises the Consultant has received from the City and any subcontracts received from City contractors over the past twelve months, equals or exceeds \$100,000, Vendex Questionnaires must be completed. If required, Vendex Questionnaires must be completed and submitted before any award of contract may be made or before approval is given for a proposed subcontractor. Non-compliance with these submission requirements may result in the disqualification of the proposal or the Consultant, disapproval of a subcontractor, subsequent withdrawal of approval for the use of an approved subcontractor, or the cancellation of the contract after its award.

42.2 Submission: Vendex Questionnaires must be submitted directly to the Mayor's Office of Contract Services, ATTN: Vendex, 253 Broadway, 9<sup>th</sup> Floor, New York, New York 10007. In addition, the Consultant must submit a Confirmation of Vendex Compliance to the Department.

42.3 Obtaining Forms: Vendex Questionnaires, as well as detailed instructions, may be obtained at [www.nyc.gov/vendex](http://www.nyc.gov/vendex). The Consultant may also obtain Vendex forms and instructions by contacting the ACCO or the contact person for this contract.



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

THE CITY OF NEW YORK

By: \_\_\_\_\_  
Deputy Commissioner

CONSULTANT:

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

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

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

EIN: \_\_\_\_\_

Approved as to Form and Certified  
as to Legal Authority

\_\_\_\_\_  
Acting Corporation Counsel

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

ACKNOWLEDGMENT BY CORPORATION

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me personally came \_\_\_\_\_, who being by me duly sworn, did depose and say that he/she resides in the City of \_\_\_\_\_ that he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

ACKNOWLEDGMENT BY COMMISSIONER

State of \_\_\_\_\_ County of \_\_\_\_\_ ss:

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

\_\_\_\_\_  
Notary Public or Commissioner of Deeds

**EXHIBIT A**  
**CONTRACT INFORMATION AND AMENDMENTS**

A. CONTRACT INFORMATION

1. Maximum Amount of Contract: Not to Exceed \$ \_\_\_\_\_  
(Addition of items 2 through 6)
2. Design Fee: \$ \_\_\_\_\_
3. Allowances for Services Based  
Upon Staffing Hours (Time Card): Not to Exceed \$125,000
4. Allowance for Hazmat Services: Not to Exceed \$125,000
5. Allowance for Reimbursable Services: Not to Exceed \$125,000
6. Allowance for Artwork: Not to Exceed \$240,000
7. Reallocation of Allowance Amounts: Notwithstanding the specific amounts allocated for allowances set forth above, the Commissioner may, by issuance of a No Cost Change Order to the Consultant, reallocate such specific allowance amounts.
8. Term of Contract: The Contract shall commence as of the date of the advice of award and shall remain in effect until Final Acceptance of all required construction work for the Project and completion of all required services hereunder. The time frame for completion of all required services for the preparation of Design Documents shall be the number of consecutive calendar days (CCDs) set forth below. Such time frame shall commence as of the date of the written advice of award and shall not include any review time by agencies whose approval the Consultant is required to obtain. Such time frame does not include services during construction.

Time Frame for Completion of all Design Documents **365** CCDs

B. AMENDMENTS TO THE CONTRACT:

1. Design services for the Project shall include all services set forth in Article 6.3, as well as High Performance Design Services. High Performance Design Services are set forth in the High Performance Building Guidelines dated April, 1999. Such Guidelines are included as an Exhibit to this Contract. Such Guidelines are available for download at [www.nyc.gov/buildnyc/ddcgreen](http://www.nyc.gov/buildnyc/ddcgreen). The Design Fee is deemed to include all services set forth in Article 6.3, as well as High Performance Design Services.
2. All references to "hazmat services" shall include hazardous materials services and/or environmental services. Payment for such services performed by the Consultant and/or its Subconsultant shall be on a time card basis.

**EXHIBIT B  
SPECIFIC REQUIREMENTS  
New York City  
DEPARTMENT OF DESIGN AND CONSTRUCTION**

**JUNE 22, 2004  
EXHIBIT B  
SPECIFIC REQUIREMENTS**

**FOR**

**PROJECT EP06-REM**



NEW YORK CITY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
BUREAU OF WATER AND SEWER OPERATIONS  
REMSEN AVENUE YARD

855 REMSEN AVENUE, BROOKLYN, NEW YORK NY 11236

## PROJECT INTENT

Through this Project, the New York City Department of Environmental Protection (“NYC DEP”) intends to completely renovate its Remsen Avenue Yard. Such renovation shall include the yard and all associated structures consisting of office and ancillary space, shower and locker rooms, interior storage spaces, and garage space for the maintenance vehicles. The yard operations will be expanded to include Brooklyn South Sewer Operations.

## BACKGROUND

The existing yard is located to the east of Remsen Avenue, to the north of Avenue D and to West of E 92<sup>nd</sup> Street. It consists of blocks 8116 and 8117 and comprises an area of approximately 105,196 sq. ft. including the mapped right-of-way of E 91<sup>st</sup> Street which it straddles. The area of this paper street is presently utilized for DEP operations. The street area will be de-mapped and is to be included in the project site area. The site is inclusive of this paper street. The NYC DEP runs all its repair work on sewer and water lines in Brooklyn out of this facility. The facility is in operation 16 hours per day, 7 days a week and this schedule may be expanded to cover around the clock operation. The day shift typically comprises some 30 workers. The building currently serves to accommodate office space, showers and lockers, parts storage, hydrant and pipe repair shops, and garage space.

Both the yard and a recently installed storage shed serve as parts and materials storage required for the roadway repair work. The exterior storage includes: water pipes, hydrants, sewer covers, catch basins, scrap iron, broken asphalt, broken pavement, sand, gravel, and concrete block. The equipment includes sifters and storage bins. There is both employee parking and truck parking on the Yard site.

There are three fuel pumps in operation on the site, one to the south of the building and two more (of relatively recent date of installation) located further away on an island also to the south of the building. NYC DEP will provide a location drawing for the tanks.

The site has been experiencing continuing problems with theft of parts. The incursions are coming from the adjacent Long Island Railroad right-of-way which bounds the yard to the North. This property boundary is secured by a chain link fence. A brick wall, topped by a chain link fence, surrounds the yard on the remaining three sides.

The existing building structure covers a footprint of approximately 11,000 sq. ft. It appears to be constructed of steel columns encased in concrete with a reinforced concrete roof and brick perimeter walls. The building is in relatively poor condition (roof leakages, inoperable rolling doors, and severe water damage in the roof area). New electrical service was introduced into this building only recently. The program foresees more space than the existing building can hold.

DEP investigation has found asbestos in the roof construction, including roofing material, flashings, and caulking. Existing pipe wrappings, window caulking, floor materials, etc. have not been probed. DDC has copies of the asbestos reports.

DDC has performed soil borings (to the north of the existing building only). The borings show sand with traces of silt down to approximately 30'. DDC has obtained copies of a probe intended

to verify grade soil bearing capacity which yielded bearings above 2 TSF in compacted backfill in a 12 ft. test pit. Soil bearing is to be verified for the new building location.

Ground water is believed to be at approximately 14 ft. depth on average.

## **APPROACH**

- (1) Since the yard straddles a mapped street, a ULURP process has been initiated to de-map the street. This work will be done under a separate contract and it is assumed that the site will be inclusive of the paper street area and will be one zoning lot. (This street segment dead ends into the railroad right-of-way and has no continuation toward the south either; a demapping should, therefore, not have any consequences on traffic patterns.)
- (9) DDC and DEP have made a commitment to sustainable design, and the design of the Remsen Ave. Yard is expected to set a high environmental standard that is, simultaneously, cost-effective and well integrated with the project's architectural expression. The design provided by the Consultant must comply with the following: (a) High Performance Building Design Criteria as set forth in the Design Consultant Guide (Exhibit H) and (b) High Performance Building Guidelines (Exhibit I). The High Performance Building Guidelines (HPBG) are available for download at [www.nyc.gov/buildnyc/ddcgreen](http://www.nyc.gov/buildnyc/ddcgreen). The design services and the services during construction are to follow the design process as described in those documents. (See Section H, High Performance Scope of Work.)
- (3) At the outset of design, topographical maps and borings will be supplied by DDC. The Consultant shall determine any needs for further investigations and evaluate the test results and provide for all necessary remediations in the construction documents. Additional soil borings will be needed since the existing set of borings is confined to an area north of the existing building.
- (4) A security system will be required comprising site lighting and possibly a camera surveillance system.
- (5) The facility has to remain in operation while construction work proceeds. The Consultant shall develop a phasing plan including any required temporary facilities, to be approved by DEP and DDC. The Consultant shall explore whether the existing metal storage shed can be used to provide temporary office and ancillary space during construction.
- (6) The two vehicle fuel pumps and tanks located in the south west corner of the site are to remain in operation and accessible for truck fueling during project construction.
- (7) The Consultant shall determine if any of the existing structures can be beneficially upgraded or otherwise modified to be reused as part of the program of uses that underlies this design scope.

## **SCOPE OF WORK**

## A GENERAL

- a. **Design services and services during construction:** The Consultant shall be required to perform all applicable services for Preliminary and Final Design and Services during Construction for the Project, as described in the Design Consultant Guide, Exhibit H. The Consultant must become thoroughly familiar with the provisions of the Guide and shall, unless otherwise stipulated, follow all directions, standards and procedures set forth in the Guide. The Consultant is advised that there is no Pre-preliminary Phase for this Project. Pre-preliminary services, as described in the Design Consultant Guide, Exhibit H, will not be part of the scope of work.
- b. **Zoning:** Provide a New York City Zoning Code analysis of the site to verify the zoning use type for this facility and determine all restrictions and requirements pertaining to building location, height, orientation, site access, fencing etc. as applicable.
- c. **Coordination:** Coordinate with the MTA/LIRR for work restrictions on properties adjoining the railroad right of way.
- d. **Design Criteria:** All required Design Services shall be in accordance with the following: (1) the Specific Requirements; (2) the Design Consultants Guide; (3) the High Performance Building Guidelines, (4) all applicable local, state and federal laws, rules and regulations, including without limitation, the New York City Building Code and the Americans With Disabilities Act, and (5) the provisions for Universal Design, as far as feasible and as set forth in "Universal Design New York", Mayor's Office for People with Disabilities, The City of New York.
- e. **Filings:** The Consultant shall make all necessary filings with necessary utility companies and all other agencies having jurisdiction and obtain approvals relative to the design.
- f. **Existing conditions:** Review any existing documents provided by DDC for all of the facilities that will be affected by the proposed scope of work. Any existing documents are provided for reference only. Existing conditions are to be verified for accuracy as relates to the scope of work.
- g. **Materials and test results:** Submit all materials and tests for approval. All specified materials shall conform to specific Client Agency Standards, if any.
- h. **Format of submissions:** Submit the final bid documents to DDC on disk, paper, mylar and microfiche as per the Design Consultant Guide, Exhibit H.
- i. **Field visits:** Make all field visits as required to accomplish the scope of work.
- j. **Drawings and Specifications:** The Consultant shall provide drawings and specifications in accordance with the Design Consultant Guide, Exhibit H. The Consultant shall prepare and organize the design documents to permit the separate bidding and award of contracts for general construction work, plumbing work, electrical work, and HVAC work.
- k. **Bid Documents:** The Consultant shall provide Bid Documents in accordance with the Design Consultant Guide, Exhibit H. Bid Documents shall include the Bid Booklet and the Addendum to the General Conditions. As indicated in the Guide, the Consultant must use the DDC General Conditions. To customize the General Conditions for this project, the Consultant must use the Addendum to the General Conditions provided by DDC.

- l. Art Commission:** This project will require the approval of the Art Commission. Presentations to the Commission will be required as described in the Design Consultant Guide, Exhibit H.
- m. Agency Standards:** The Consultant will be required to follow any applicable DEP Standards.
- n. Models:** The Consultant shall provide for a Schematic Design working model in addition to the presentation model required in the Design Consultant Guide, Exhibit H.
- o. Occupancy of site and buildings:** The facility will remain occupied during construction. Phasing documentation shall be provided by the Consultant as required by the project.
- p. Temporary facilities:** Contract documents for all temporary facilities required by phasing, including but not limited to, utilities, furnishings and equipment shall be part of this contract. Consultant shall develop a program of spaces for the temporary facilities in consultation with DDC and DEP.
- q. Demolition:** The Consultant shall, in accordance with the Guide, provide contract documents for the demolition of any or all structures on the site as required to implement the selected design.
- r. Schedule of deliverables (prints and copies):** All deliverables are to follow the requirements stated in the Design Consultant Guide, Exhibit H.
- s. Preservation:** The Consultant shall provide for the preservation of noteworthy architectural or other historical elements as directed by DEP and DDC.
- t. Project Schedule:** The number of consecutive calendar days allowed for the completion of design documents shall be as stated in Exhibit A. The Consultant shall provide the Project Schedule of Milestones for acceptance by DEP and DDC. The Consultant shall maintain this schedule throughout the project duration.
- u. Subconsultants:** Subconsultants for the Project are set forth in Exhibit C. The Consultant specifically agrees to engage such Subconsultants for the Project for the entire duration thereof, unless otherwise approved by the Commissioner. The Consultant shall be responsible for the performance of services by all its Subconsultants. Basic design services and services during construction provided by Subconsultants as described in the Design Consultant Guide, Exhibit H, are deemed included in the Design Fee.
- v. Commissioning:** The Consultant shall provide design services and services during construction as described in the Design Consultant Guide, Exhibit H, including the additional commissioning required to achieve a Silver LEED rating. The actual commissioning services will be provided by another Consultant engaged directly by DDC. The Consultant will be required to coordinate with the Commissioning Agent, provide documentation, attend meetings as a team member during design and construction as required, and review and include the Commissioning Agent's specifications for commissioning in the project specifications.
- w. Value Engineering:** The Consultant shall participate in a value engineering study and workshop as described in the Design Consultant Guide, Exhibit H, including, without limitation, providing all required data and documentation, attending meetings as necessary, and modifying the construction documents as required.



- x. **High Performance:** The Consultant shall follow the protocol and provide all required services as described in the Design Consultant Guide, Exhibit H, for Pilot Projects. The Consultant shall provide all work related to obtaining LEED certification for a Silver rating.
- y. **Art Work:** The project will participate in the City's "Percent for Art" program. The Consultant shall provide services as described in the Design Consultant Guide, Exhibit H.
- z. **Hazmat and Environmental Services:** The Consultant shall provide services as described in the general Contract and in Section I of these Specific Requirements as additional professional services.

## ADDITIONAL PROFESSIONAL SERVICES

**(A-1) Additional professional Services:** The Consultant may be directed by the Commissioner to provide Additional Professional Services for the Project, as set forth below. The Consultant shall provide such Additional Professional Services through its own professional employees or through its Subconsultants, as directed in writing by the Commissioner. Payment for Additional Professional Services shall be based upon staffing hours (Time Card), as set forth in Article 7.

Additional Professional Services shall be professional services which the Commissioner determines are required for the Project and are in addition to or beyond the necessary and usual services in connection with Design Services, as set forth in the Design Consultant Guide, Exhibit H. Additional Professional Services shall include, without limitation, the services set forth below.

- (a) Additional project representation during construction
- (b) Plant tagging and field services
- (i) Additional presentations to the Art Commission as described in the Design Consultant Guide, Exhibit H.
- (j) Participation in the Value Engineering Study as described in the Design Consultant Guide, Exhibit H.

**(A-2) Hazmat Services and Environmental Services:** The Consultant shall, through its Subconsultants set forth in Exhibit C, provide investigative and design services in connection with the removal and remediation of hazardous materials ("Hazmat Services" as defined by the Contract and as directed by the Commissioner) and Environmental Services as described in Section I of these Specific Requirements. The Consultant shall provide, without limitation, detailed sampling, analysis, and construction documents to satisfy all applicable environmental regulations. Payment for Hazmat Services and Environmental Services shall be based upon staffing hours (Time Card), as set forth in Article 7.

**(A-3) Reimbursable Services:** The Consultant may be directed by the Commissioner to provide Reimbursable Services for the Project, as set forth below. The Consultant shall provide such Reimbursable Services, if so directed in writing by the Commissioner. The Consultant shall provide such Reimbursable Services through entities approved by the Commissioner, and shall utilize the method of procurement and form of payment

directed by the Commissioner. Payment for Reimbursable Services shall be in accordance with Article 7.

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

- (a) Conducting exploratory probes and/or tests to investigate concealed construction
- (b) Printing design documents beyond requirements set forth in the Design Consultant Guide
- (c) Laboratory services for controlled inspection
- (d) Long distance travel, i.e., travel which is in excess of 75 miles from whichever of the following is closer to the destination: (1) Columbus Circle, or (2) Consultant's home office
- (k) Filing fees and related application fees for New York City agencies
- (l) Filing fees for LEED certification
- (g) Specialty Consultants, other than the Subconsultants set forth in Exhibit C
- (h) Any other services, determined by the Commissioner to be necessary for the Project.

## **B. ARCHITECTURAL SCOPE OF WORK**

### **9. Urban Design / Site Design considerations (see also G. Landscape):**

The Consultant shall provide all services and deliverables for Preliminary and Final Design and Services during Construction as described in the Design Consultant Guide, Exhibit H, unless otherwise noted.

- a. The Consultant shall explore different siting possibilities for the building with a view towards improving the existing urban landscape. The Consultant shall investigate different relationships between the new building and the fencing or walls around the perimeter. The option may exist to retain all or part of the existing building if it lends itself to an overall project of design quality. Otherwise it is assumed it will be demolished, along with the other structures on the site.
- b. The Consultant shall Investigate which are the best ways of entering and leaving the site, including provision of two points of access in different streets, so as to optimize the yard operations. A separate security booth to guard entrances may be required.
- c. The Consultant shall investigate whether it is advisable to renovate the existing fence or to replace it. Adequate buffering of the entire perimeter should include street tree planting.
- d. The Consultant shall explore ways to minimize the rising and blowing of dust from debris piles etc. when the yard is in operation.
- e. The Consultant shall provide an adequate setting for two flags (United States and City or Veterans') including nighttime lighting.
- f. Provide parking for all employees on site.
- i. Provide outdoor storage as required by updating the existing spaces in close cooperation with NYC DEP and NYC DDC.

**2. Architectural considerations:**

- i. The Consultant shall provide all interior design services for the selection, layout and installation of furnishings, fixtures and equipment for all offices, public spaces, lockers, toilets, and showers. The Consultant shall identify the locations and provide the required power or other building services for the installation of owner-supplied equipment in shop and garage areas.
- i. Building Program: At the outset of the preliminary design phase, the Consultant shall develop a final detailed program for the building spaces and for the yard operations and equipment in close cooperation with DEP and DDC.
- ix. The final interior program for each space, based on the preliminary program below and as further refined by DEP, shall identify the functional requirements for each space as per the Guide, including furnishings and equipment, and all related mechanical, electrical, plumbing and other special services requirements.
- x. The exterior program requirements for parking, material and equipment storage, and recycling operations for construction and catch basin debris and all other yard functions shall be developed as per the Guide.
- xi. The final interior and exterior program shall be fully coordinated with the High Performance Plan's objectives and stipulations including integration of the Environmental Program Matrix into the program.

The preliminary program as issued by NYC DEP, calls for the following spaces:

Space	Occupants	Title	Sq. ft. Net each	Sq.ft. Net aggreg.	Totals Sq.ft.
<b>Supervisor Offices</b>					
Private office	1	District Supervisor	150		
Private office	1	District Supervisor	150		
Private office	1	Superintendent	150		
Private office	1	Superintendent	150		
Sub-total net					600
Sub-total gross					<b>750</b>
<b>Staff Offices</b>					
Office space (cubicles)	17	Supervisors	78	1,326	
	6	Shop clerks	56	336	
	2	PAAs	56	112	
Sub-total net					1,774
Sub-total gross					<b>2,218</b>

<b>Office Support</b>					
Conference /lunch room	35 + 2	Instructors and students	615		
Kitchen			72		
Copier/fax			20	20	
2 File cabinets			40	80	
Laundry .(wash, gas dry, sink)			65		
Sub-total net					787
Sub-total gross					<b>984</b>
<b>Storage and Shops</b>					
Machine shop	1	Laborer	1500		
Storage-Hi/Lo	1	Laborer	1600	Overhead 2000# trolley hoist.	
Storage-Hi/Lo	1	Laborer	1000	Heavy load slab	
Storage	1	Laborer	800		
Storage	1	Laborer	800		
Equipment storage	1	Laborer	800		
Equipment storage	1	Laborer	800		
Sub-total net					6,300
Sub-total gross					<b>7,875</b>
<b>Male Laborers Lockers and Toilets</b>					
Men's laborers' Locker rooms	71	Laborers ( 2 lockers each)	20	1420	
	3	Pipe caulkers ( 2 lockers each)	20	60	
	4	Shop clerks ( 2 lockers each)	20	80	
Men's laborers' bathroom	78		10	780	
Sub-total net					2,340
Sub-total gross					<b>2,925</b>
<b>Female Laborers Lockers and Toilets</b>					

Women's laborers' locker room	5	Laborers (2 lockers each)	20	100	
	2	PAAs (2 lockers each)	20	40	
	4	Shop clerks (2 lockers each)	20	40	
Women's laborers' bathroom	9		10	90	
Sub-total net					310
Sub-total gross					<b>388</b>
<b>Supervisors Lockers and Toilets</b>					
Supervisors' locker room	2	Superintends - (2 lockers each)	20	40	
	2	District supervisors (2 lockers each)	20	40	
	17	Supervisors (2 lockers each)	20	340	
Supervisors' bathroom	21		10	210	
Sub-total net					630
Sub-total gross (1.25)					<b>788</b>
<b>Garage and Loading</b>					
Garage	17	Jimmies	180	3,060	
	6	Dump trucks	375	2,250	
	1	Fork lift	150	150	
	13	Construction trucks	450	5,850	
	7	Hydrant truck	240	1,680	
	2	Boom trucks	600	1,200	
	1	Wet connection	225	225	
	1	Payloader	225	225	

	2	Portable air compressors	225	450	
	2	Sedans	200	400	
	4	Backhoes	300	1,200	
	5	Catch basins	375	1,875	
	1	Power rodder	250	250	
	6	Flushers	330	1,980	
	2	Pump trucks	375	750	
	1	Towable light tower	225	225	
	1	Solar arrow board	225	225	
Loading Dock (enclosed)		2 trucks 45", truck bed level.	1100		
Truck wash bay (enclosed)					
Sub-total net	Garage and Loading				23,595
<b>Total gross (1.7)</b>	<b>Garage and Loading</b>				<b>40,110</b>
Sub-total gross	Office / Lockers / Storage / Shops				17,250
Sub-total gross Note 1	Added gross including note 1 and mechanical /electrical/boiler rooms				4,000
<b>Total gross (1.25)</b>	<b>New Office, including Lockers/Storage/Shops and Mechanical Spaces</b>				<b>21,300</b>
<b>Grand Total Preliminary Budgeting Gross Area</b>					<b>61,400</b>

**\* Note a:**

The circulation factor of 1.25 (as applied by NYC DEP to generate the preliminary program) does not offer much for required corridors and staircases. Also the thickness of walls needs to be included. The Consultant shall determine whether this is an appropriate factor and modify it if necessary.

- b. The Consultant shall explore different locations, footprints, volumetric configurations, and orientations for the building, including multi-story arrangements, which may be helpful for optimizing yard space and for improving circulation patterns.
- c. The Consultant shall explore designs that maximize natural ventilation for extensive periods of the year.
- d. As part of the High Performance Scope, the Consultant shall explore using a green roof and possibly using the collected rainwater for irrigating the plantings.

- e. Windows, clerestories, and roof lights are desirable to provide day lighting and a productive and healthy work environment. The Consultant shall explore and develop alternatives to make such openings secure (glass block, screens, etc).
- f. The Consultant shall explore alternatives that might preserve some of the significant features of the existing building such as the projecting ornamental brickwork at the entrance.
- g. A sprinkler system will be required for storage and garaging spaces. The Consultant shall investigate whether a sprinkler system is required for the offices and ancillary spaces.

## **C. STRUCTURAL SCOPE OF WORK**

Provide all services and deliverables for Preliminary and Final Design, and provide services during construction as described in the Design Consultant Guide, Exhibit H.

All structural work shall conform to the latest NYC Building Code. Steel and concrete design shall conform to the latest steel and concrete codes, respectively AISC and ACI Codes.

The Consultant shall provide structural design and contract documents for the new building's superstructure and foundation as well as any structural modifications or repairs to the existing structures compatible with the following requirements:

### **1. General Criteria**

- a. Structural items required for site development, such as retaining walls, exterior steps, pits, support for fuel oil tanks and form works, scaffolding, temporary supports and similar items, shall be designed and detailed by a licensed structural engineer.
- b. For the concrete specifications, conform to the CSI format providing separate specification sections for Concrete Reinforcement, Concrete Form Work, Cast-In-Place Concrete, and Concrete Curing.
- c. The Consultant shall investigate and determine the necessity of any repair, reinforcement or replacement of existing structural elements in the modification of the existing building.

### **2.. Foundation design**

- a. Poor soil condition require a geo-technical Consultant to be retained to prepare a report with recommendations for earthquake foundation design. In this geo-technical report the potential for liquefaction and other data to be used in earthquake design should be discussed and recommendations made. The report should be made available at the preliminary stage of the design. All services of this Sub-consultant are deemed to be included in the Design Fee.
- b. Specifications shall state that required excavations, shoring, sheet piling for excavations, and scaffolding shall be designed and constructed under the supervision of a NYS licensed professional engineer and approved as required by the NYC Dept of Buildings.

### **3. Structural Design**

- a. The schematic submission shall include analysis of alternate structural systems with technical and economic evaluations and comparisons. The Consultant shall recommend one scheme enumerating the reasons why it is the best, most suitable, and economical for this project. Alternate systems investigation shall focus on structural material type, framing configuration and compatibility with architectural and other engineering discipline schemes.
- b. Use a minimum compressive strength for structural concrete of 4000 p.s.i. All concrete exposed to weather or soil shall be air-entrained, unless a lesser compressive strength is approved by DDC/DEP
- c. Use galvanized steel lintels at exterior walls.
- d. Use posts for supporting rooftop mechanical-equipment dunnage to facilitate flashing and waterproofing at the roof.
- e. Parapets and other masonry structural elements shall be designed and detailed by the structural engineer.

#### **D. PLUMBING SCOPE OF WORK**

Provide all services and deliverables for Preliminary and Final Design, and services during construction, as described in the Design Consultant Guide, Exhibit H.

The Consultant shall provide for the demolition and removal of all existing plumbing systems in the building to be demolished.

Consultant is to check condition and adequacy of all existing service lines and decide if replacement is necessary.

For the new building, Consultant shall provide for all necessary piping systems, such as, but not limited to, gas, sanitary, storm drainage, domestic and fire water services including new meters and backflow prevention devices. (Verify with DEP Cross Connection RPZ unit.)

1. The Consultant shall provide for a complete storm system. The system shall include roof drains, leaders and all necessary structures required for storm disposal. The Consultant shall consider on-site sedimentation issues during design. Consultant shall assume responsibility for all tests and calculations required by the authorities in connection of such as Drywells, Detention Tank, etc. Verify code requirements for detention systems.
2. The Consultant shall design for a complete sanitary drainage system. System shall include, but not limited to waste and vent piping, floor drains, trench drains, connection to fixtures and equipment, ejectors if necessary, house trap, etc.
3. The Consultant shall provide for the following:
  - a. A system for oily waste with all associated piping, waste tank and Accessories.
  - b. A domestic cold water and fire protection water distribution system.
  - c. Provide insulation on all domestic cold water, hot water, hot water circulating piping, electric heat tracing piping, storm water drain bodies, horizontal storm water piping.
  - d. The Consultant shall provide a gas distribution system for all gas-operated equipment, as required.



- e. The Consultant shall provide for the design of the installation of all new plumbing fixtures and accessories including all related piping and plumbing work in all toilets, janitor closets, trade shops, lunch room, as per the architectural layout and wherever else necessary.
- f. Provide handicapped accessible fixtures and accessories where required by the applicable codes.
- g. Provide for all plumbing necessary for HVAC equipment. Provision shall also be made for proper disposal of condensate from cooling equipment etc.
- h. Provide for self-contained electric water coolers and emergency eye wash stations with all associated plumbing work.
- i. Provide exterior hose bibs for grounds maintenance operations.
- j. Consultant shall locate fire hydrants at the site if necessary, as per NYC Fire Department requirements.
- k. The Consultant shall provide for the discontinuance and removal/ relocation of any existing heating fuel oil and gasoline and diesel tanks and piping systems in the entire site as per all applicable laws. Two existing fuel pumps at the southwest corner of the site shall remain operational and accessible for truck fueling during phased construction.

## **E. MECHANICAL SCOPE OF WORK**

Provide all services and deliverables for Preliminary and Final Design, and services during construction, as described in the Design Consultant Guide, Exhibit H.

1. Provide three schemes for the design of the heating and air conditioning systems. The systems shall be developed with the input of the sustainable design objectives as stated in section H of this document.
2. Provide central air conditioning for all the interior spaces (including locker rooms) except the bathrooms and garage.
3. Provide a complete heating system for all rooms and spaces in the new building. In the garage, provide separate air supply and exhaust systems with heating coils on the supply air system. The Consultant shall consider the feasibility of heating the entire facility with roof mounted gas-fired heated hot air in lieu of a boiler with a hot water circulating system and perimeter radiation.
4. Provide a heating coil for all air-conditioning and supply air ventilation air handlers to temper the outdoor air in the winter time.
5. Provide toilet exhaust systems for all toilets and locker rooms as per the New York City Building Code.
6. Provide a fire suppression (sprinkler system(s)) system for all spaces in this project as required by the New York City Building Code, New York City Fire Department, and all other authorities having jurisdiction or by program requirements.

## **F. ELECTRICAL SCOPE**

Provide all services and deliverables for Preliminary and Final Design, and services during construction, as described in the Design Consultant Guide, Exhibit H.

The Consultant shall do the following work: Based on the program provided by DDC/DEP and further developed as part of the Schematic Design Phase.

1. The work shall include as a minimum the following items:
  - a. Expansion of electric service and /or replacement of service entrance equipment if required
  - b. Building power distribution and lighting systems
  - c. Emergency lighting
  - d. Night lighting
  - e. Exterior lighting and security lighting
  - f. Exit lighting
  - g. New lighting fixtures
  - h. Regular and special outlets
  - i. Conduit system and outlets for Owner's equipment
  - j. Power for equipment provided by others
  - k. Telephone and data systems
  - l. Fire alarm system
  - m. Security system
  
2. The electrical work required for this project shall be performed by a competent Electrical Engineer, who shall formally attest that the electrical design is in conformance with the New York City Electrical Code. The Electrical Engineer shall, upon request, attend meetings with the Consultant and the Professional representatives of the Department of Design and Construction (DDC).

## **H. LANDSCAPE SCOPE OF WORK**

Provide all services and deliverables for Preliminary and Final Design and Services during Construction as described in the Design Consultant Guide, Exhibit H, unless otherwise noted. Specifically this work shall include, without limitation, the following:

1. The documentation and identification of all trees over 4" in diameter as to their particular genus and species. The Consultant shall document the condition of these trees, as well as all trees neighboring the site, that may be affected by construction.
2. The design for barrier-free access to the front entrance of the facility from the city sidewalk, parking areas, and all ancillary facilities located within the site.
3. The design for new employee parking and visitor parking areas, as well as parking for all vehicles that will not be kept inside the new facility.
4. The installation of security perimeter fencing with gates or repair of existing perimeter fence and walls.

5. The installation of security lighting, and adequate entrance and pedestrian walkway lighting. Provide outdoor electrical outlets, as required. Coordinate with electrical lighting design.
6. Site plumbing documents for both irrigation and maintenance purposes. These shall include outdoor, wall-mounted hose bibs for areas near the building, and quick-coupler type water hook-ups for water requirements within the yard.
7. The specifying of new plant material for street tree planting and new-planted areas within the site. The areas within the site might include the area around the facility's entrance, the new outdoor storage areas and possibly a planting band around the facilities perimeter. No plant shall require special irrigation or maintenance and all plants shall be hardy enough to withstand the dusty and dry conditions on the site. The Landscape Architect shall inspect and tag all plant material at the nursery. After installation, a second inspection shall be made of all installed plants. For street tree plantings, the Consultant shall specify only DPR approved street trees.
8. The installation of a new drainage systems or modification to the existing drainage systems, for the collection of all storm water on the site, as well as all water used in the everyday operation of the facility. Provide sediment traps for site drains to prevent sediment discharge to sewers. Consider the use of ground water recharge basins of site and roof drains. Verify retention requirements and discharge rates to storm or combined sewers.
9. Provisions for new outdoor storage bins to house sand, gravel, etc., as well as storage areas for all salvaged materials brought to the facility for recycling or disposal. New locations for existing sifting machines are required.
10. The installation of environmentally responsible landscape materials such as the use of recycled materials, high-albedo pavements, proper plant selection and location, efficient irrigation systems, as well as other site-related sustainable design considerations.

## H. HIGH PERFORMANCE DESIGN SCOPE OF WORK

The project will be a High Performance project, as described in the Design Consultant Guide, Exhibit H, and the High Performance Building Guidelines (HPBG) which are available for download at [www.nyc.gov/buildnyc/ddcgreen](http://www.nyc.gov/buildnyc/ddcgreen). It will follow all requirements and processes outlined in the above documents, many of which are summarized on pages 37 – 42 of the HPBG. DDC's process includes a daylong High Performance Workshop, which all Consultants and Subconsultants must attend, and the creation of a High Performance Plan and Environmental Matrix during the schematic design phase. The Consultant or its Subconsultants will prepare and direct the workshop and develop the High Performance Plan.

The Consultant shall file the project with the US Green Building Council (USGBC) and must achieve at minimum a Silver rating according to the LEED 2.1 standards for new buildings. While the LEED criteria allow the Consultant considerable latitude, given the site and the City's priorities, the following LEED points will be required on this project: storm water management (either point), reduction of heat island effect (either point), water efficient landscaping (one point), 20% water use reduction, 25% energy reduction, additional commissioning, construction waste management (2 points), recycled content (1 point), indoor chemical and pollutant source control, daylight and views (2 points). The Consultant shall register the project with the USGBC and be responsible for all documentation required. The Consultant shall designate a LEED point-person who will be responsible for developing and

updating a LEED Action Plan and coordinating with all Consultants and the specifications writer to ensure that the project receives the required rating.

As described in the Design Consultant Guide, Exhibit H, for all projects DDC requires inclusion of its Construction and Demolition Waste specification section, the development of a C&D Waste Management Plan, and the inclusion of specifications for a number of low-toxicity or high-recycled content materials. See the website of DDC's Office of Sustainable Design (OSD) for further information as well as for all required specifications in a down-loadable format: [www.nyc.gov/buildnyc/ddcgreen](http://www.nyc.gov/buildnyc/ddcgreen) . Further information on products and C&D waste outlets can be provided upon request by the OSD at DDC.

The project is eligible for funding from NYPA through its ENCORE program. The Consultant shall provide all necessary documentation, including energy analysis and payback summary for alternative energy strategies.

The project will be commissioned and will receive additional commissioning as described by LEED. The Consultant and its Subconsultants must participate in the commissioning process as described in the Design Consultant Guide, Exhibit H, and as required to achieve a LEED Silver rating.

## **I. HAZARDOUS MATERIALS AND ENVIRONMENTAL SCOPE OF WORK**

### **1. General**

The Consultant shall provide all necessary design and construction documents for any and all environmental work, with the exception of asbestos, that is needed to complete the project. (Requirements for Asbestos are described I Section A-2 on page 6 of these Specific Requirements.) This work shall include all required assessments, investigations, characterizations, and their components (sampling, analysis, drilling, coring, reporting findings). The Consultant shall manage all required procedures, applications, and approval processes in accordance with the agreed project schedule. Any environmental design and construction documents shall be included in the milestone submissions as appropriate.

At the outset, the Consultant shall determine which environmental studies and approvals will be necessary to support the EAS application, if required, and to obtain the required regulatory approvals. This project may fall under stringent regulatory review and work including but not limited to, detailed site investigation and characterization, and a written sampling and analysis plan may be required.

The Consultant shall investigate the history of usage of the site with regard to soil, water and potentially hazardous or regulated materials subject to environmental regulation, following the protocol established by the American Society for Testing and Materials (ASTM), Phase I Environmental Site Assessment Practice (E 1527). The initial background investigation shall provide the basis for a Sampling and Analysis Plan with a clear and concise statement of the scope of the investigation and the assessment as they relate to past use and future development. The Consultant is advised to itemize specific tasks that

are necessary to achieve the project objectives and to provide a detailed time schedule for task completion that is in accordance with the general project schedule. Items that need to be addressed in the Sampling and Analysis Plan and Field, Laboratory Methods and Protocols include, but are not limited to:

2. **Sampling And Analysis Plan Summary**

- Background data with details of previous site investigations
- A brief site history
- Products used on site
- Products manufactured on site
- All by-products of manufacturing
- All waste generated on site
- Any potentially hazardous or regulated materials, except asbestos
- Past environmental permits issued
- Environmental enforcement actions
- On and off-site releases that may have impacted environmental media
- Description of regional geology and hydrogeology
- Detailed description of the site
- A listing of contamination sources within one-quarter mile that has the potential to adversely impact the subject property
- Description of all activities proposed for the site.

3. **Field, Laboratory Methods & Protocol**

- Proposed boring locations and rationale for placement of borings
- Proposed sampling locations and rationale for sampling locations
- Description of methods and equipment to be used to identify and quantify soil, groundwater, surface water and marine sediment contamination
- Description of procedures and equipment to be used to sample all other types of media that may be adversely impacted
- Proposed well construction details, depths, screened intervals, and well development procedures with rationale for well placement
- Analytical methods to be utilized and justification for specific parameter analysis. This must accommodate all of the immediate as well as the future processes (i.e. EIS, SEQ, CEQR, ULURP, etc.)
- A plan to utilize existing wells and sample public or private wells that may be affected by contaminants in the vicinity of the subject property
- Detailed investigation-derived waste management and disposal methods.

4. **Environmental Work Plan**

The Consultant shall develop an environmental work plan and submit it to the DDC for review and approval prior to commencement of environmental field activities. Items to be addressed in the Environmental Work Plan may include, but are not limited to:

- The Sampling and Analysis Plan
- Site Safety and Health plan
- General QA/QC procedures (for sample collection and sample custody)
- Equipment decontamination
- Soil boring installation
- Soil classification and description
- Monitoring well installation methods
- Monitoring well construction
- Well development
- Investigation derived waste
- Water level measurement and well survey
- Non-aqueous phase liquid measurement
- Soil sampling
- Sediment sampling
- Waste pile sampling
- Groundwater sampling
- Surface water sampling
- Wastewater sampling
- Drum sampling
- Tank sampling
- Geophysical (Ground Penetrating Radar, Magnetometer) Survey.

#### 5. **Environmental Design, Drawings And Specifications**

Based on the findings of the environmental sampling, the Consultant shall prepare design and construction documents and specifications to address community and worker health and safety, regulatory compliance related to waste management and facility operations. These specifications along with a drawing containing pertinent general notes addressing environmental issues, shall be submitted to DDC for review and approval.

Items to be addressed in the Environmental Design include, but are not limited to:

- Health and Safety Program requirements
- Material (soil, groundwater, debris) Handling Program requirements
- Facility Tank (under-, above-ground storage tank systems) Compliance Status and Upgrades
- Remediation System(s): Methane mitigation (passive/active) design, soil parging, soil vapor extraction, groundwater pump and treat, bio-remediation design.

### **END OF SPECIFIC REQUIREMENTS**

**EXHIBIT C  
KEY PERSONNEL**

Principal in Charge \_\_\_\_\_  
Lead Designer \_\_\_\_\_  
Project Manager \_\_\_\_\_  
Project Architect \_\_\_\_\_

\*\*\*\*\*

**LIST OF SUBCONSULTANTS**

Structural Engineering: \_\_\_\_\_  
Electrical Design: \_\_\_\_\_  
Mechanical Design: \_\_\_\_\_  
Plumbing Design: \_\_\_\_\_  
Interior Design and Furniture Layout: \_\_\_\_\_  
Geotechnical Design: \_\_\_\_\_  
Historic Preservation Design: \_\_\_\_\_  
Landscaping Design: \_\_\_\_\_  
Hazmat Design: \_\_\_\_\_  
Environmental Engineering \_\_\_\_\_  
Cost Estimating: \_\_\_\_\_  
Specifications \_\_\_\_\_  
High Performance Design \_\_\_\_\_

**EXHIBIT D**

**DESIGN FEE**

Design Fee: For the performance of all required Design Services for the Project, as set forth in Article 6.3 and as amended by Exhibit A, the City agrees to pay and the Consultant agrees to accept a total Design Fee, the amount of which is set forth below. The Design Fee is deemed to include all costs and expenses incurred by the Consultant and/or its Subconsultant(s) in the performance of all required Design Services for the Project, as set forth in Article 6.3 and as amended by Exhibit A, including all expenses related to management, overhead and any anticipated profit, exclusive of any expenses and anticipated profit for: (1) Pre-Preliminary Design Services, as set forth in Article 6.2; (2) Additional Professional Services, as set forth in Article 6.5; (3) Hazmat Services, as set forth in Article 6.4; (4) Reimbursable Services, as set forth in Article 6.6, and (5) Artwork, as set forth in Article 6.3.11.

Design Fee: \$ \_\_\_\_\_



**EXHIBIT E**

**STAFFING REQUIREMENTS**

**LIST OF TITLES AND ALL INCLUSIVE HOURLY RATES**

**ARCHITECTURAL PERSONNEL**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Principal.....	_____
Lead Designer.....	_____
Project Architect.....	_____
Project Manager.....	_____
Senior Architectural Designer.....	_____
Junior Architectural Designer.....	_____
Senior Interior Designer.....	_____
Junior Interior Designer.....	_____
Programming Specialist.....	_____
Senior Landscape Architect.....	_____
Junior Landscape Designer.....	_____
Senior Drafter/CAD.....	_____
Intermediate Drafter/CAD.....	_____
Junior Drafter/CAD.....	_____

**ENGINEERING PERSONNEL**

<b>TITLE</b>	<b>ALL INCLUSIVE HOURLY RATE</b>
Principal.....	_____
Project Engineer.....	_____
Project Manager.....	_____
Senior Structural Designer.....	_____
Senior Electrical Designer.....	_____
Senior Plumbing Designer.....	_____
Senior HVAC Designer.....	_____
Junior Structural Designer.....	_____
Junior Electrical Designer.....	_____
Junior Plumbing Designer.....	_____
Junior HVAC Designer.....	_____
Senior Engineering Drafter/CAD.....	_____
Intermediate Engineering Drafter/CAD.....	_____
Junior Engineering Drafter/CAD.....	_____

**PERSONNEL FOR ESTIMATING AND SPECIFICATIONS**  
**TITLE ALL INCLUSIVE HOURLY RATE**

Principal..... \_\_\_\_\_  
 Senior Estimator..... \_\_\_\_\_  
 Senior Specification Writer..... \_\_\_\_\_

**PERSONNEL FOR HIGH PERFORMANCE DESIGN**

**TITLE ALL INCLUSIVE HOURLY RATE**

LEED Specialist \_\_\_\_\_  
 Energy Modeler \_\_\_\_\_  
 Geothermal/ Alt. Power Specialist \_\_\_\_\_  
 High Performance Materials Specialist \_\_\_\_\_  
 Solid Waste Specialist \_\_\_\_\_

**PERSONNEL FOR HAZMAT SERVICES**

Principal..... \_\_\_\_\_  
 Hazmat Project Manager..... \_\_\_\_\_  
 Hazmat Project Designer..... \_\_\_\_\_  
 Hazmat Inspector / Investigator..... \_\_\_\_\_  
 Hazmat Monitor..... \_\_\_\_\_

**PERSONNEL FOR ENVIRONMENTAL ENGINEERING SERVICES**

Principal..... \_\_\_\_\_  
 Environmental Project Manager..... \_\_\_\_\_  
 Environmental Project Designer..... \_\_\_\_\_  
 Environmental Inspector / Investigator..... \_\_\_\_\_  
 Environmental Monitor..... \_\_\_\_\_

**PERSONNEL FOR VARIOUS SPECIALTIES**

**TITLE ALL INCLUSIVE HOURLY RATE**

Historic Preservation Specialist..... \_\_\_\_\_  
 Masonry Conservation Specialist..... \_\_\_\_\_  
 Fire Protection Specialist..... \_\_\_\_\_  
 Geotechnical Specialist..... \_\_\_\_\_  
 Junior Specialist..... \_\_\_\_\_  
 Specialist Technician..... \_\_\_\_\_  
 Senior Drafter/CAD..... \_\_\_\_\_  
 Intermediate Drafter/CAD \_\_\_\_\_  
 Junior Drafter/CAD..... \_\_\_\_\_

**EXHIBIT F**

**REQUIREMENTS PER TITLE**

**Applicable Requirements:** Any personnel provided by the Consultant and/or its Subconsultant must satisfy the requirements for the specific title in which he/she is performing services. The requirements for any given title shall be the **GREATER** of the following:

- (A) Requirements Per Title set forth in Section (A) below, or
- (B) Minimum Requirements Per Title set forth in Section (B) below.

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**SECTION A – REQUIREMENTS PER TITLE**

**REQUIREMENTS PER TITLE** The Requirements Per Title set forth below are based upon the qualifications of specific personnel identified by the Consultant in its Proposal.

**ARCHITECTURAL PERSONNEL**

<b>TITLE</b>	<b>REQUIREMENTS PER TITLE</b>	
	<b>Number of Years of Experience</b>	<b>Professional License or Certification</b>
Project Architect.....	_____	_____
Lead Designer.....	_____	_____
Project Manager.....	_____	_____
Senior Architectural Designer.....	_____	_____
Senior Interior Designer.....	_____	_____
Senior Landscape Architect.....	_____	_____

**ENGINEERING PERSONNEL**

<b>TITLE</b>	<b>REQUIREMENTS PER TITLE</b>	
	<b>Number of Years of Experience</b>	<b>Professional License or Certification</b>
Project Engineer.....	_____	_____
Project Manager.....	_____	_____
Senior Structural Designer.....	_____	_____
Senior Electrical Designer.....	_____	_____
Senior Plumbing Designer .....	_____	_____
Senior HVAC Designer .....	_____	_____

**PERSONNEL FOR ESTIMATING AND SPECIFICATIONS**

TITLE	REQUIREMENTS PER TITLE	
	Number of Years of Experience	Professional License or Certification
Senior Estimator.....	_____	_____
Senior Specification Writer.....	_____	_____

**PERSONNEL FOR ENVIRONMENTAL SERVICES**

TITLE	REQUIREMENTS PER TITLE	
	Number of Years of Experience	Professional License or Certification
Environmental Project Manager.....	_____	_____
Environmental Project Designer.....	_____	_____

**PERSONNEL FOR HAZMAT SERVICES**

TITLE	REQUIREMENTS PER TITLE	
	Number of Years of Experience	Professional License or Certification
Hazmat Project Manager.....	_____	_____
Hazmat Project Designer.....	_____	_____

**PERSONNEL FOR HIGH PERFORMANCE SERVICES**

TITLE	MINIMUM REQUIREMENTS	
	of Experience	NUMBER OF YEARS PROFESSIONAL or Certification
LEED Specialist	_____	_____
Energy Modeler	_____	_____
Geothermal/ Alt. Power Specialist	_____	_____
High Performance Materials Specialist	_____	_____
Solid Waste Specialist	_____	_____
High Performance Technician	_____	_____

**PERSONNEL FOR VARIOUS SPECIALTIES**

TITLE	REQUIREMENTS PER TITLE	
	Number of Years of Experience	Professional License or Certification
Historic Preservation Specialist.....	_____	_____
Masonry Conservation Specialist.....	_____	_____
Fire Protection Specialist.....	_____	_____

Geotechnical Specialist..... \_\_\_\_\_

**EXHIBIT F**  
**SECTION B - MINIMUM REQUIREMENTS PER TITLE**

**ARCHITECTURAL PERSONNEL**

<b>TITLE</b>	<b>MINIMUM REQUIREMENTS</b>	
	<b>Number of Years of Experience</b>	<b>Professional License or Certification</b>
Lead Designer .....	7	Professional License
Project Architect.....	7	Professional License
Project Manager.....	7	Professional License
Senior Architectural Designer.....	5	Professional License
Junior Architectural Designer.....	3	
Senior Interior Designer.....	5	
Junior Interior Designer.....	3	
Programming Specialist.....	3	
Senior Landscape Architect.....	5	Professional License
Junior Landscape Designer.....	3	
Senior Drafter/CAD.....	5	
Intermediate Drafter/CAD	3	
Junior Drafter/CAD.....	1	

**ENGINEERING PERSONNEL**

<b>TITLE</b>	<b>MINIMUM REQUIREMENTS</b>	
	<b>Number of Years of Experience</b>	<b>Professional License or Certification</b>
Project Engineer.....	7	Professional License
Project Manager.....	7	Professional License
Senior Structural Designer.....	5	Professional License
Senior Electrical Designer.....	5	
Senior Plumbing Designer.....	5	
Senior HVAC Designer.....	5	
Junior Structural Designer.....	3	
Junior Electrical Designer.....	3	
Junior Plumbing Designer.....	3	
Junior HVAC Designer.....	1	
Senior Engineering Drafter/CAD.....	5	
Intermediate Engineering Drafter/CAD	3	
Junior Engineering Drafter/CAD	1	

**PERSONNEL FOR ESTIMATING AND SPECIFICATIONS**

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Senior Estimator.....	7	
Senior Specification Writer.....	7	CSI Certified

**PERSONNEL FOR HAZMAT SERVICES**

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Hazmat Project Manager.....	5	
Hazmat Project Designer.....	5	Licensed by N.Y.S. Dept. of Labor
Hazmat Inspector / Investigator.....	3	Licensed by N.Y.S. Dept. of Labor and N.Y.C. Dept. of Env. Protection
Hazmat Monitor.....	3	Licensed by N.Y.S. Dept. of Labor

**PERSONNEL FOR HIGH PERFORMANCE SERVICES**

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	PROFESSIONAL LICENSE or Certification
LEED Specialist	5	LEED Accredited Professional
Energy Modeler	3	
Geothermal/ Alt. Power Specialist	3	
High Performance Materials Specialist	3	
Solid Waste Specialist	3	
High Performance Technician	3	

**PERSONNEL FOR VARIOUS SPECIALTIES**

TITLE	MINIMUM REQUIREMENTS	
	Number of Years of Experience	Professional License or Certification
Historic Preservation Specialist.....	5	
Masonry Conservation Specialist.....	5	
Fire Protection Specialist.....	5	
Geotechnical Specialist.....	5	
Specialist Technician.....	3	
Senior Drafter/CAD.....	5	
Intermediate Drafter/CAD	3	
Junior Drafter/CAD.....	1	

**EXHIBIT G**  
**SCHEDULE OF UNIT PRICES FOR LABORATORY SERVICES**

All laboratory services must be provided by a laboratory that meets all certification requirements established by the New York State Department of Health.

**BULK SAMPLING**

ITEM #	DESCRIPTION	UNIT PRICE
1.	Bulk Sample Analysis for Asbestos by Polarized Light Microscope  1A. Friable ACM 1B. Non -Friable Organically Bound ACM	\$ 13.00 per sample (48 hour TAT*) \$ 27.00 per sample (48 hour TAT*)
2.	Bulk Sample Analysis for Asbestos by Transmission Electron Microscope  2A. Friable –ACM 2B. Non-Friable Organically Bound ACM	\$ 45.00 per sample (48 hour TAT*) \$ 60.00 per sample (48 hour TAT*)
3.	Paint Chip Sample Analysis for Lead by Atomic Absorption Spectroscopy	\$11.50 per sample (48 hour TAT*)
4.	Wipe Sample Analysis for Lead by Atomic Absorption Spectroscopy	\$11.50 per sample (48 hour TAT*)

**AIR SAMPLING AND ANALYSIS**

ITEM NO.	DESCRIPTION	UNIT PRICE
1.	Air Sample Analysis For Asbestos By Phase Contrast Microscope	\$11.00 per sample (24 hour TAT*)
2.	Air Sample Analysis For Asbestos By Transmission Electron Microscope	\$ 60.00 per sample (24 hour TAT*)
3.	Air Sample Analysis For Lead By Atomic Absorption Spectroscopy	\$13.00 per sample (24 hour TAT*)
4.	TCLP Sample Analysis For Lead By Atomic Absorption Spectroscopy	\$44.00 per sample (48 hour TAT*)

\*TAT = TURN AROUND TIME





City of New York Department of Design and Construction

**David J. Burney, AIA**  
Commissioner

**Donald Hooker**  
Agency Chief  
Contracting Officer

30-30 Thomson Avenue  
Long Island City, NY 11101

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Fax 718 / 391-1885  
www.nyc.gov/buildnyc

**August 5, 2004**

**ADDENDUM NO. 1**

**PROJECT: Consultant Services for Architectural, Engineering Design and Services  
During Construction, Two-Stage RFP, PIN: 8502005IN0001P**

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**THE ADDENDUM IS ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THE  
REQUEST FOR PROPOSALS AND IS HEREBY MADE A PART OF SAID REQUEST FOR PROPOSALS  
TO THE SAME EXTENT AS THOUGH IT WERE ORIGINALLY THEREIN.**

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**REQUEST FOR PROPOSALS**

Question: At the August 3, 2004, DDC Open House, there was some question about whether or not the stage one portfolio submittal should include subconsultant projects.

Answer: Stage one is intended to showcase the experience of the prime firm only.

Question: At that same Open House a question was raised as to whether proposers who have historically worked as joint ventures, be allowed to propose on stage one of the RFP. Currently the RFP on page RFP-3 allows joint ventures only in stage two.

Answer: Upon further consideration, joint ventures are permissible in stage one only to the extent that the joint venture relationship represents a previously existing joint venture whose existence can be demonstrated by meeting the stage one portfolio submittal requirements for not less than three of the five required projects using built projects designed by that joint venture.

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**By signing in the space provided below, the Proposer acknowledges receipt of this Addendum.**

**THIS ADDENDUM MUST BE SIGNED BY THE PROPOSER FOR THE CONTRACT AND ATTACHED  
TO THE TECHNICAL PROPOSAL.**

---

**Donald Hooker**  
**Agency Chief Contracting Officer**

---

**Name of Proposer**

**By** \_\_\_\_\_

**Title** \_\_\_\_\_