

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303

Volume I of II
Request for Proposals
And
Draft Contract

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**PART I
INTRODUCTION**

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**PART I
INTRODUCTION**

1. INVITATION TO SUBMIT PROPOSAL

1.1 Background

A. Site and Context

Sherman Creek is located along the west coast of the Harlem River, north of Dyckman St., within the Manhattan neighborhood of Inwood. The waterfront of Sherman Creek is zoned M3-1 for heavy industrial uses (“Waterfront”). Consolidated Edison maintains several active power distribution facilities in this area, and NYPD and DOT have active facilities between 202nd and 205th Sts. Going west, between Ninth and Tenth Aves., the area transitions to an M1-1 zone characterized by low-rise warehousing and light industrial buildings that buffer the R7-2 upland residential community west of Nagle Ave. from the heavy industrial zone along the Waterfront. There are some residential uses in this area, as well. The closest transit connections to the Project Site are the Dyckman St. and 207th St. “1 train” subway stations on Tenth Ave., and the Bx 12 bus line, which crosses the University Heights Bridge into the Bronx.

The Waterfront can be described, from south to north, as a succession of Sections (together, the “Project Area”):

South Section: Sherman Creek inlet to West 202nd St. Sherman Creek inlet, a small natural cove sparsely covered by trees and vegetation, constitutes the southern ‘book-end’ of the Waterfront. Academy St. fronts the north side of the inlet, marking the transition between the natural environment that characterizes Sherman Creek inlet and the industrial urban environment that defines the Waterfront. This Section includes a “green street” opportunity at the intersection of Academy St., West 201st St., and 10th Ave. The properties in this lower Section are owned/controlled by ConEd and the lots extend down to the shoreline; they include a parking facility at Academy St. (Block-Lot 2183 – 1) and a power distribution facility at West 201st St. (Block-Lot 2184 – 1). ConEd is redeveloping the Academy St. parking lot as a power distribution facility, as part of its “M29” infrastructure upgrade project.

Central Section: West 202nd St. to West 206th St. The Waterfront along this Section is defined by five (5) street-end parks recently developed by DPR, open air ConEd, NYPD, and DOT parking uses, and a DOT arterials maintenance facility at Block-Lot 2186 – 9; the southeastern-most

corner of the latter structure extends down to the shoreline. The Waterfront lots in this Section are City-owned and, in cases, lie underwater, extending beyond the shoreline (Block-Lot 2184 – 40, 2185 – 10, and 2186 – 9).

North Section: West 206th St. to West 208th St. This Section lies at the foot of the University Heights Bridge connecting Manhattan and the Bronx. This Section is also defined by industrial and parking uses and City ownership of the Waterfront. Block-Lot 2187 – 20 lies partially underwater.

The Waterfront has been inaccessible for decades. Academy St., a mapped City street that has been closed to the public for decades, blocks all public access to the northern shoreline of Sherman Creek inlet. The area is disconnected from the adjacent upland residential area of eastern Inwood. This situation has further limited the already scarce waterfront and open space recreation opportunities in the area, and does not capitalize on ongoing borough-level investments like the Manhattan Waterfront Greenway, nor the Waterfront's direct views to Roberto Clemente State Park, in the Bronx.

Over the past five years, NYCEDC has sought to revitalize Sherman Creek, working closely with DPR, DCP, DOT, elected officials, and key stakeholders such as CB12 and NRYIP, a not-for-profit entity whose mission is to reclaim, restore, and develop parks, open space, and community gardens in New York City ("SC Stakeholders"). On January 31, 2004, the SC Stakeholders held a planning workshop setting forth the needs, aspirations, and planning issues facing the Inwood/Sherman Creek community ("SCPW").

The SCPW recommendations were grouped into three broad categories: "Housing and Commercial Development," "Transportation," and "Waterfront and Recreation." The latter have materialized into specific physical improvements. Several Federal, State, City, and private actions in the area complement these initiatives.

NYCEDC is seeking a Consultant Team to assist in the creation of a conceptual plan (the "Conceptual Plan") that defines an overall vision for the Waterfront and develops a framework to guide future designers on the elements of a public Waterfront esplanade that incorporates all of the SCPW's recommendations (the "Project"). The Conceptual Plan shall include a conceptual design, cost estimates, maintenance strategy, and implementation strategy for the Project.

The Conceptual Plan shall create a Waterfront amenity that embodies the following principles:

- **Quality:** is durable, functional, safe, and environmentally-sensitive;
- **Attractiveness:** enhances the aesthetic appeal of the Project Site and attracts a diverse range of users by offering opportunities for active and passive recreation and interaction;
- **Continuity:** provides effective physical and programmatic connections between Sherman Creek inlet, the street-end parks between West 202nd and 206th Sts., and West 208th St.; and
- **Access:** provides effective Waterfront access to the residents of the upland residential community of Inwood.

The Conceptual Plan shall also incorporate a comprehensive planning process that thoroughly engages SC Stakeholders.

1.2 **Invitation.** NYCEDC is pleased to invite you to submit a proposal in response to this Request for Proposals ("RFP"). The Services to be performed, the Project and the Project Site are outlined in the RFP Summary below (Part I, Section 2), along with such other information as the anticipated dates for the execution of a Contract with the Consultant, if one is selected pursuant to this RFP, and the anticipated Contract Term. All undefined capitalized terms set forth in this RFP shall have the same definitions as set forth in Appendix A to Part III of the draft Contract (the "Contract Draft") annexed to this RFP as Exhibit 1.

Subject to the availability of funds and the responses to this RFP, NYCEDC will select a Consultant to provide the Services. The Consultant shall be experienced in all aspects of the Services. The Consultant will commence the Services upon a written Notice to Proceed from NYCEDC or upon execution of the Contract by the Consultant and NYCEDC substantially in the form of the Contract Draft. The Contract Draft is an initial draft subject to further review and revision by NYCEDC prior to execution. NYCEDC shall not be bound to the terms of any aspect of the Contract Draft, and the final acceptance of any successful proposal shall be subject to, and contingent upon, the negotiation between the parties of a Contract in form and substance acceptable to NYCEDC. Nevertheless, **you should review the Contract Draft and be familiar with all of the terms and conditions set forth therein prior to submitting your proposal.**

2. RFP SUMMARY

2.1 **In General.** This summary of terms, deadlines and requirements specific to this RFP is set forth for your immediate reference and convenience only. It does not set forth all of the requirements of this RFP, but should be read in conjunction with the General Requirements (Part II) and the Specific Requirements (Part III) of this RFP. You should review and become familiar with all parts of this RFP prior to submitting your proposal.

2.2 **Specific Terms, Deadlines and Requirements.**

2.2.1 **Project Information.**

2.2.1.1 **The Project:** Sherman Creek Waterfront Master Plan

2.2.1.2 **The Project Site:** Sherman Creek,
as more specifically described in the Scope of Services (Appendix B of the Contract Draft) and in Section 1.1 above

2.2.1.3 **Type of Services:** Planning and design services,
as more specifically described in the Scope of Services (Appendix B of the Contract Draft)

2.2.2 **The Consultant:**

2.2.2.1 **Type:** Landscape Architect or Urban Designer

2.2.2.2 **The Consultant Team:** It is anticipated that the Consultant will lead a team of consultants (collectively, with the Consultant, the “Consultant Team”) in providing the Services. The members of the Consultant’s staff and/or the Consultant’s Subcontractors on the Consultant Team are expected to include, without limitation, the following:

2.2.2.2.1 **Required Consultant Team Members:**

2.2.2.2.1.1 Urban designer

2.2.2.2.1.2 Landscape architect

2.2.2.2.1.3 Site planner

2.2.2.2.1.4 Cost estimator

2.2.2.2.1.5 Graphic designer

2.2.2.2.1.6 Environmental consultant

2.2.2.2.1.7 Planner or land use consultant with expertise in street mapping/de-mapping actions under ULURP and related CEQR rules and regulations

2.2.2.2.2 **Other Possible Consultant Team Members:** Civil engineer or marine engineer

2.2.2.3 **Experience Required:** The Consultant shall be experienced in the following:

2.2.2.3.1 Demonstrable experience conducting planning and urban design/site planning/landscape architecture projects of a similar scope, purpose, size, and complexity as the Services (for both the firm and proposed staff).

2.2.2.3.2 Coordination of multiple public agencies and community groups/interests on projects of similar scope.

2.2.2.3.3 Cost estimating, including expertise with waterfront infrastructure.

2.2.2.3.4 Familiarity with funding, public review processes, approvals, permitting, New York waterfront zoning regulations, and community outreach and facilitation

2.2.2.3.5 Experience in planning and development in the Upper Manhattan and/or in comparable communities

2.2.3 Contract Information.

2.2.3.1 **Anticipated Contract Execution Date:** May 1, 2009.

2.2.3.2 **Anticipated Contract Term:** One (1) Year.

2.2.3.3 **Funding Source:** This contract will be funded with Environmental Protection Fund monies through a grant provided by the New York State Department of State, Division of Coastal Resources, along with a City match. See the Draft Contract, Appendix K for more information about the grant requirements.

2.2.4 Questions Regarding RFP.

2.2.4.1 **Question/Clarification Deadline:**

(i) **Date:** February 11, 2009

(ii) **Time:** 5:00 pm

2.2.4.2 **Permitted Method:** At Pre-Proposal Meeting, if one is conducted; otherwise in writing to Recipient at Recipient's Mailing Address or E-Mail Address as listed in Section 2.2.6 below only.

2.2.4.3 **Question Response Date:** February 18, 2009

2.2.4.4 **Answers to Questions Available at** www.nycedc.com (the "Website")

2.2.5 Pre-Proposal Meeting.

2.2.5.1 **Date:** February 4, 2009

2.2.5.2 **Time:** 2:00 pm – 3:00 pm

2.2.5.3 **Meeting Place:** 110 William Street, NY, NY Conference Room 3A (**Attendees must go to the reception area on the 6th Floor first**).

2.2.5.4 **Confirmation Contact Person:** Alejandro Baquero Cifuentes

2.2.5.5 **E-mail:** shermancreekwaterfront@nycedc.com – Please include the words "Pre-Proposal Meeting" in the subject line of the e-mail.

2.2.5.6 **Attendance Mandatory:** ☐ Yes ☒ No

2.2.6 **Proposal Submission Requirements.**

2.2.6.1 **Label on Envelope:**

2.2.6.1.1 **One for the Proposal Only:** “Proposal for Planning and Design Services for the Sherman Creek Waterfront Master Plan”

2.2.6.1.2 **One for the Doing Business Data Form Only:** “Doing Business Data Form for Planning and Design Services for the Sherman Creek Waterfront Master Plan”

2.2.6.1.3 **One for Prices Only:** “Price Proposals for Planning and Design Services for the Sherman Creek Waterfront Master Plan”

2.2.6.1.4 **One for M/WBE Utilization Plans Only, if required by Part I, Section 2.2.7:** “M/WBE Utilization Plan for RFP for Planning and Design Services for the Sherman Creek Waterfront Master Plan”

2.2.6.2 **Number of Sets of Proposals to be submitted:** Six (6), plus one (1) CD-ROM with the proposal in .pdf format

2.2.6.3 **Submission Deadline:**

(i) **Date:** March 6, 2009

(ii) **Time:** 4:00 pm

2.2.6.4 **Method:** By Hand

2.2.6.5 **Submit to the following Recipient:**

Maryann Catalano
Senior Vice President for Contracts

2.2.6.6 **Recipient’s Mailing Address:**

NYCEDC
110 William Street. 6th Floor
New York, NY 10038

2.2.6.7 **Recipient’s E-mail address:**

shermancreekwaterfront@nycedc.com

2.2.7 **M/WBE Program Percentages.**

2.2.7.1 **Target Subcontracting Percentage: 30%**

2.2.7.2 **Participation Goal: 30%**

2.2.8 **Selection Criteria.** Criteria on which NYCEDC will base its selection may include, without limitation, the following:

2.2.8.1 The respondent's and, as applicable, the proposed Consultant Team's experience in providing services similar to the Scope of Services described herein

2.2.8.2 The quality of the respondent's management, reputation, and references and, as applicable, the quality of the proposed Consultant Team

2.2.8.3 The terms under which the respondent will commit its personnel and, as applicable, the personnel of the proposed Consultant Team members, without transfers and changes

2.2.8.4 The respondent's demonstration of experience with respect to and expertise in all of the specific Services contemplated under this RFP

2.2.8.5 The quality and completeness of the proposal and the degree to which it demonstrates the respondent's full understanding of and the ability to perform the Services to be rendered

2.2.8.6 Favorable history, if any, in contracting or doing business with the City and/or NYCEDC

2.2.8.7 Respondent's proposed plans for encouraging participation by minority and women-owned business enterprises in connection with the Services including, as applicable, the respondent's M/WBE Utilization Plan

2.2.8.8 Absence of any default in respondent's financial obligations to the City

2.2.8.9 The proposed fee and cost schedules.

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**PART II
GENERAL REQUIREMENTS**

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**PART II
GENERAL REQUIREMENTS**

1. SERVICES TO BE PERFORMED AND WORK PRODUCT

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

2. STAFFING

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

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

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

3. COMPENSATION

Subject to and in accordance with the final terms of the Contract, NYCEDC shall compensate the selected Consultant as follows:

3.1 **In General.** Under the Contract, NYCEDC will agree to pay to the Consultant an amount not to exceed a Maximum Contract Price to be negotiated between NYCEDC and the Consultant based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors. The Maximum Contract Price shall be payable as provided for in Sections 2.1 and 2.2 of the General Terms and Conditions (Part II) of the Contract and Appendix C (Part III of the Contract).

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

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

4. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

4.1 **M/WBE Program.** Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, to increase competition for City business and to lower contract costs. The Corporation endorses these goals and participation by MBEs and WBEs in the provision of the Services. All respondents shall comply with all requirements of the Corporation's M/WBE Program applicable to this RFP.

4.2 **Minority and Women -Owned Business Enterprises.** In order to be considered an M/WBE for purposes of this Contract, the business must have received certification as such by DSBS. Businesses that have not been certified as M/WBEs by DSBS (even though they have been certified as M/WBEs by the New York City School Construction Authority, the Women Presidents' Educational Organization, the New York & New Jersey Minority Supplier Development Council, Inc. and the New York State Department of Economic Development, Division of Minority & Women's Business Development) should contact DSBS for information and applications related to obtaining M/WBE certification from DSBS. Contractors and

potential contractors may also access directories of certified MBEs and WBEs maintained by DSBS. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as Subcontractors and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts. You may contact DSBS at:

Telephone: (212) 513-6311
Website: <http://www.nyc.gov/getcertified>
Address: 110 William Street
New York, New York 10038.

4.3 Target Subcontracting Percentage. The Target Subcontracting Percentage is the percentage of the total Contract that the Corporation anticipates that the selected Consultant would in the normal course of business award to one or more Subcontractors for amounts under \$1 million. The Target Subcontracting Percentage applicable to this Contract is set forth in Part I, Section 2.2.7.1 of this RFP. All respondents shall be subject to said Target Subcontracting Percentage unless the respondent, prior to the submission of its proposal, requests and the Corporation grants a full or partial waiver of the Target Subcontracting Percentage for the Contract pursuant to Section 4.6 below. No modification of the Target Subcontracting Percentage will be permitted after the Contract is awarded.

4.4 Participation Goal. The Participation Goal expressed as a percentage of the total dollar value of subcontracts under Contract for amounts under \$1 million to be performed by M/WBEs compared to the total dollar value of all subcontracts under this Contract for amounts under \$1 million. The M/WBE Participation Goal applicable to this RFP and the Contract is set forth in Part I, Section 2.2.7.2 of this RFP.

4.5 M/WBE Utilization Plans.

4.5.1 If Part I, Section 2.2.7 sets forth M/WBE Program Percentages, then the respondent must complete and submit as part of its proposal a utilization plan (the “M/WBE Utilization Plan”) in the form annexed at Exhibit 3 to this RFP. A sample of a completed M/WBE Utilization Plan is annexed to the form to be completed by the respondent at Exhibit 3. The respondent’s M/WBE Utilization Plan must set forth:

4.5.1.1 the percentage of work the respondent intends to subcontract;

4.5.1.2 the percentage of work the respondent intends to award to Subcontractors for amounts under \$1 million;

4.5.1.3 the identity of all proposed M/WBE Subcontractors to which the respondent intends to award subcontracts;

4.5.1.4 in cases where the respondent intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and

4.5.1.5 the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end.

4.5.2 In the event that the respondent's M/WBE Utilization Plan indicates that the respondent does not intend to award the Target Subcontracting Percentage, the respondent's proposal will be deemed non-responsive, unless the Corporation has granted the respondent a pre-award waiver of the Target Subcontracting Percentage in accordance with Section 4.6 below.

4.5.3 Within 30 days of being awarded the Contract, the selected respondent shall submit a definitive M/WBE Utilization Plan containing all of the information listed in Section 4.5.1 and specifying all proposed Subcontractors to which it intends to award subcontracts within the subsequent 12 months. In the alternative, the Corporation may, in its sole discretion, permit the Consultant to utilize the M/WBE Utilization Plan submitted by the Consultant with its proposal, provided that it contains all of the required information. (In the case of multi-year contracts, the Consultant shall submit such a list to the Corporation's Chief Contracting Officer 30 days prior to the anniversary of the Commencement Date in each subsequent year during the Contract Term.) In the event that the Corporation does not approve a Subcontractor proposed by the Consultant, the Contractor shall have a reasonable time to propose alternate Subcontractors. Once approved, the Consultant's definitive M/WBE Plan will be annexed to and made a part of the Contract as Appendix L.

4.6 **Pre-award Waiver of Target Subcontracting Percentage.** The Corporation may, in its sole discretion, grant a full or partial waiver of the Target Subcontracting Percentage to a respondent that demonstrates, **before submission of its proposal**, that the respondent has legitimate business reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan. In making its determination, the Corporation will consider factors that include, but are not limited to whether the respondent has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts for under \$1 million represented by the Target Subcontracting Percentage. In making such determination, the Corporation may consider whether the proposed M/WBE Utilization Plan is consistent with past subcontracting practices of the respondent and whether the respondent has made good faith efforts to identify portions of the Contract that it intends to subcontract. All waiver requests must be in writing and submitted to the following e-mail address: **mwbe@nycedc.com**.

4.7 **Joint Ventures.** Respondents are encouraged to enter into joint ventures with MBEs and WBEs.

4.8 **Violations by Respondents to RFPs.** If the Corporation determines that a respondent has violated the requirements of the Corporation's M/WBE Program, then the Corporation may disqualify the respondent from competing for the Contract and may remove the respondent from the list of qualified consultants maintained by the Corporation.

4.9 **Statements.** Statements made in any instrument submitted to the Corporation in connection with the Corporation's M/WBE Program or the M/WBE requirements applicable to

this RFP or the Contract shall be submitted under penalty of perjury, and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury.

4.10 **Other M/WBE Requirements.** Article 9 of the General Terms and Conditions (Part II) of the Contract Draft contains additional provisions related to the Corporation's M/WBE Program regarding, without limitation, reporting, change orders, modifications to M/WBE Utilization Plans, compliance audits, enforcement and evaluations. **Please be sure that you review and understand all of the requirements of the Corporation's M/WBE Program applicable to this RFP and the Contract prior to submitting your proposal.**

5. DOING BUSINESS DATA FORM REQUIREMENTS. Pursuant to Local Law No. 34, each respondent shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com in the "Available Projects" section. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms. Note: responding to this RFP constitutes "doing business with the City" under Local Law No. 34.

6. CONTRACT CONDITIONS

6.1 **In General.** The acceptance of any proposal shall be subject to, and contingent upon, the execution by NYCEDC of a Contract substantially in the form of the Contract Draft annexed hereto. NYCEDC shall not be bound to the terms of the Contract Draft but shall use such form as a basis of negotiating a final Contract with the selected Consultant, if any. **However, please note that, in general, the General Terms and Conditions (Part II) and the Appendices (Part III), other than Appendix B and Appendix C, are NOT negotiable.**

6.2 **Specific Terms.** The Contract shall contain, among other terms, certain provisions required by law, by policies of the City, and the City Contract including, without limitation, the following:

6.2.1 Executive Order 50 Supply and Service Rider - which can be found at www.nycedc.com in the "Available Projects" section. This rider contains equal opportunity requirements mandated under Executive Order No. 50 (1980).

6.2.2 Provisions providing that the Consultant:

6.2.2.1 is an independent contractor and that neither it nor any of its employees is or shall be an agent, servant or employee of the City or NYCEDC;

6.2.2.2 shall defend, indemnify and hold harmless the City and NYCEDC against any claims or damages relating to its acts and omissions;

6.2.2.3 shall maintain financial and other records relating to the Contract, including, without limitation, payroll records, for a period of six (6) years from the end of the Contract Term, and shall make such records available for inspection and audit;

6.2.2.4 has no conflicts of interest with, or outstanding financial obligations owing to, the City;

6.2.2.5 maintains insurance as specified in Article 6 of the General Terms and Conditions (Part II) of the Contract and Appendix E of Part III of the Contract with insurers licensed or authorized to provide insurance and in good standing in the State of New York, such policies to be in a form acceptable to, and include any conditions reasonably required by NYCEDC, and naming NYCEDC and the City as additional insureds;

6.2.2.6 is licensed to conduct business in the State of New York;

6.2.2.7 shall comply with the City's requirements regarding vendor background investigations, which include a review by the City's Department of Investigation of the City's past experience with the Consultant;

6.2.2.8 shall complete and submit the Business Entity Questionnaire and a Principal Questionnaire for each principal of the Consultant (collectively, the "Vendex Clearance Forms");

6.2.2.9 shall complete and submit the Doing Business Data Forms;

6.2.2.10 shall represent and warrant that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the Services as set forth in the Contract. The Consultant must further agree that it shall employ no person having such a conflict of interest in the performance of the Services;

6.2.2.11 shall agree to New York County as the venue in any legal action or proceeding between the Consultant and NYCEDC;

6.2.2.12 acknowledges that the Contract shall be assignable to the City;
and

6.2.2.13 comply with the City's prohibition of certain business practices with respect to Northern Ireland.

Respondents are directed to the Contract Draft (Exhibit 1 to this RFP) for the exact language of the provisions referred to in the foregoing paragraphs.

7. GENERAL CONDITIONS, TERMS, LIMITATIONS AND REQUIREMENTS

7.1 **Proposal as Offer to Contract.** Unless a specific exception is noted, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful respondent to execute the Contract substantially in the form annexed hereto as Exhibit 1. Any supporting documents or other items attached as exhibits to this RFP shall be incorporated into the Contract. The successful respondent shall cooperate in supplying any information as may be required with respect to the Vendex Clearance Forms, and any other government review and approval forms. Respondent's proposal shall remain open for acceptance by NYCEDC and

shall remain firm and binding upon the respondent for at least 60 days after the date on which the proposals are received by NYCEDC, except that NYCEDC may by written notice to the respondent extend that date for an additional 45 days.

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

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

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

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

7.6 **NYCEDC Rights.** This is a "Request for Proposals" and **not** a "Request for Bids". NYCEDC shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. Notwithstanding anything to the contrary contained herein, NYCEDC reserves the right to take any of the following actions in connection with this RFP: amend, modify or withdraw this RFP; waive any requirements of this RFP; require supplemental statements and information from any respondents to this RFP; award a contract to as many or as few or none of the respondents as NYCEDC may select; to award a contract to entities who have not responded to this RFP; accept or reject any or all proposals received in response to this RFP; extend the deadline for submission of proposals; negotiate or hold discussions with one or more of the respondents; permit the correction of deficient proposals that do not completely conform with this RFP;

waive any conditions or modify any provisions of this RFP with respect to one or more respondents; reject any or all proposals and cancel this RFP, in whole or in part, for any reason or no reason, in NYCEDC's sole discretion. NYCEDC may exercise any such rights at any time, without notice to any respondent or other parties and without liability to any respondent or other parties for their costs, expenses or other obligations incurred in the preparation of a proposal or otherwise. All proposals become the property of NYCEDC.

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

7.8 **Modifications and Questions.**

7.8.1 NYCEDC will advise RFP respondents of any modifications to this RFP by posting them on the Website. (See Part I, Section 2.2.4.4.) Nothing stated at any time by any representative of NYCEDC or of any other entity shall effect a change in, or constitute a modification to this RFP unless posted on the Website or confirmed in writing by NYCEDC.

7.8.2 Respondents may submit questions and/or request clarifications from NYCEDC by submitting them ***in writing*** to the Recipient at the Recipient's Mailing Address or E-Mail Address listed in the RFP Summary (Part I, Section 2.2.6). All questions and requests for clarifications must be submitted no later than the Question/Clarification Deadline listed in the RFP Summary (Part I, Section 2.2.4.1). Any questions or requests for clarifications received after this date will not be answered. All questions received through the Question/Clarification Deadline will be answered no later than the Question Response Date listed in the RFP Summary (Part I, Section 2.2.4.3), and NYCEDC shall post such answers on the Website, so as to be available to all respondents, if NYCEDC determines that such answers provide material clarification to the RFP.

7.8.3 Respondents are reminded to check the Website periodically to view updated information and answers to questions posed by other respondents.

7.8.4 While NYCEDC may send Notices, Addenda or other information related to this RFP to respondents via e-mail alerts or otherwise in writing, such e-mail alerts and other written materials shall be considered courtesy copies only. In the event any conflict exists between any information set forth on the Website and any Notice, Addendum or other information provided to a respondent by NYCEDC in writing via e-mail or otherwise, the information set forth on the Website will govern and be definitive. NYCEDC is not obligated to provide the respondent with any Notices, Addendum or other information that appears on the Website in writing, and the fact that NYCEDC may have sent one or more e-mails, Notices, Addenda or other written information to a respondent shall not be deemed to imply that NYCEDC has any duty or obligation to continue to do so.

7.9 **City Not a Party.** The City is not a party to this RFP, has made no representation to any prospective respondent and shall have no liability whatsoever in connection with this

RFP.

7.10 **Brokerage Fees or Commissions.** The City and NYCEDC shall not be obligated to pay any fee, cost or expense for brokerage commissions or finder's fees with respect to the execution of the Contract. The respondent agrees to pay the commission or other compensation due to any broker or finder in connection with the Contract, and to indemnify and hold harmless the City and NYCEDC from any obligation, liability, cost and/or expense incurred by the City or NYCEDC as a result of any claim for commission or compensation brought by any broker or finder in connection with the Contract.

7.11 **Additional Work.** During the Contract, NYCEDC, in its sole discretion, may choose to work with the selected Consultant and/or hire its services for projects other than or that exceed the Scope of Services described herein. NYCEDC's decision to do so may be based on the firm's relevant experience and its successful performance under the Contract.

7.12 **Proposals From Principals.** Only proposals from principals will be considered responsive. Individuals in representative, agency or consultant status may submit proposals only at the direction of certified principals, where the principals are solely responsible for paying for such services.

7.13 **Disclaimer.** NYCEDC and the City, and their respective officers, directors, agents, members and employees make no representation or warranty and assume no responsibility for the accuracy of the information set forth in this RFP. Further, NYCEDC and the City do not warrant or make any representations as to the quality, content, accuracy or completeness of the information, text, graphics, links or any other facet of this RFP once it has been downloaded or printed from this or any server, and hereby disclaim any liability for any technical errors or difficulties of any nature that may arise in connection with the Website on which this RFP is posted, or in connection with any other electronic medium utilized by respondents or potential respondents in connection with or otherwise related to the RFP.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**PART III
SPECIFIC REQUIREMENTS**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**PART III
SPECIFIC REQUIREMENTS**

1. STRUCTURE AND CONTENT.

In order to be considered responsive, your proposal must be organized and include all of the items as listed below. If Part I, Section 2.2.7 indicates that:

- M/WBE Program Percentages **are not** applicable to this RFP, the proposal must be submitted in **three (3) sealed envelopes**
- M/WBE Program Percentages **are** applicable to this RFP, the proposal must be submitted in **four (4) sealed envelopes**.

The contents of the envelopes must be as follows:

1.1 Envelope # 1 [Required for All Proposals]. In one sealed envelope, labeled as required by Part I, Section 2.2.6.1.1 place the following:

1.1.1 A statement of your approach to the Services that clearly demonstrates your understanding of the Scope of Services and your ability to manage and complete multiple projects in a timely and cost-efficient manner. The proposal must include a detailed statement of your approach and ability to provide the required Services and Work Product including, but not limited to a schedule for completing all aspects of the Services. It is imperative that the proposal includes a list and detailed explanation of the extent of all work or services to be performed by Subcontractors.

1.1.2 Proposals should demonstrate clearly that the respondent is capable of and experienced in providing all of the Services necessary for the complete performance of the Contract.

1.1.3 The proposal should contain a description of the respondent's organization, including a history of the firm, a description of all subsidiaries and affiliates, an organization chart indicating the level of responsibility of all personnel who are expected to provide Services, and the name and location(s) of business of the respondent. This should be accompanied by, to the extent known, the names and resumes of all individuals and entities that will be performing the Services under the Contract including, without limitation, all personnel, Subcontractors and other entities or individuals performing and/or supervising the Services, and the respondent's

proposed staffing schedule. Please include the addresses, phone and fax numbers, e-mail addresses, designated roles, and relevant experience and expertise for the same.

1.1.4 The respondent shall make the following statements and representations as part of its proposal:

1.1.4.1 That the respondent has examined all parts of this RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.

1.1.4.2 That the respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation for the performance of the Services.

1.1.5 The respondent should provide a description of services it has previously provided to governmental and quasi-governmental organizations with similar requirements to those contained herein. Written statements of reference or the names, addresses and telephone numbers of administrators or contract officers, who can explain the respondent's involvement and the scope of services, should be included. Information concerning personnel assignment and contract duration should be described.

1.1.6 If the Scope of Services (Appendix B, Part III of the Contract) permits payment of Allowable Additional Costs, the respondent should provide a list of anticipated Allowable Additional Cost items, excluding costs for these items..

1.1.7 **Do not include in this portion of your proposal any costs or fees associated with the above items.** Costs and fees should be included in a separate envelope. (See Part III, Section 1.3 below.)

1.1.8 **Do not include in this portion of your proposal your Doing Business Data Form.** This form should be included in a separate envelope. (See Part III, Section 1.2 below.)

1.1.9 **Do not include in this portion of your proposal your proposed M/WBE Utilization Plan.** Your proposed M/WBE Utilization Plan should be included in a separate envelope. (See Part III, Section 1.4 below.)

1.2 **Envelope #2 [Required for All Proposals].** In a second sealed envelope labeled as required by Part I, Section 2.2.6.1.2 place a complete and accurate Doing Business Data Form in the form attached hereto as Exhibit 4 to this RFP.

1.3 **Envelope #3 [Required for All Proposals].** In a third sealed envelope labeled as required by Part I, Section 2.2.6.1.3 place complete fee and cost schedules for all Services. All fee and cost schedules should be submitted in the forms attached hereto as Exhibit 2 to this RFP. NYCEDC may not consider fee and cost schedules that do not follow the prescribed formats.

1.4 **Envelope #4 [Proposals Subject to M/WBE Program Percentages Only].** If Part I, Section 2.2.7 sets forth M/WBE Program Percentages, in a fourth separate sealed envelope labeled as required by Part I, Section 2.2.6.1.4 place a completed and signed M/WBE

Utilization Plan in the form attached hereto as Exhibit 3.

1.5 **Non-compliant Proposals**. In furtherance of and without limiting NYCEDC's rights as set forth in Part II, Section 7.6 of this RFP, non-compliant proposals may, in NYCEDC's sole discretion, be considered "not responsive" and may be rejected by NYCEDC including, without limitation, proposals that are:

1.5.1 not enclosed in separate sealed envelopes as aforesaid;

1.5.2 not properly labeled;

1.5.3 received by a person other than the designated Recipient; and/or

1.5.4 missing any information, certifications, supplemental forms or other documentation required by this RFP or by applicable law.

1.6 **Cover Letter**. You should include a cover letter summarizing key points of your proposal.

2. **PRE-PROPOSAL INFORMATION MEETING**. If Part I, Section 2.2.5 indicates that a pre-proposal information meeting will be held, you should attend the meeting in order to receive any additional information that may be distributed at the meeting. You will also be able to obtain answers to any questions you may have about the Services at the meeting. **If Part I, Section 2.2.5.6 indicates that attendance at the pre-proposal information meeting is mandatory and you do not attend the meeting, your proposal will not be accepted.** Please confirm your attendance with the Confirmation Contact Person identified in Part I, Section 2.2.5 indicating who from your office will attend. Except as may otherwise be permitted by Part I, Section 2.2.4.2, no other contact with NYCEDC or the City regarding issues raised by this RFP is permitted.

3. **INTERVIEWS**. Interviews may be held with any or all of the respondents after the receipt of proposals. Interviews with NYCEDC will be scheduled after its initial review of proposals.

4. **SELECTION**. NYCEDC will review each respondent's proposal in its totality. The selected respondent, if any, will be a respondent whose proposal is most advantageous to NYCEDC's goals. See Part I, Section 2.2.8 for an explanation of the criteria on which NYCEDC will base a selection.

5. **SUBMISSION**.

5.1 You must submit the number of sets of your proposal indicated in Part I, Section 2.2.6.2.

5.2 All proposals must be **delivered by hand**. Proposals received via facsimile or e-mail transmittal, or by regular or express mail will not be accepted.

5.3 **Proposals are due and must be received by the Recipient at the location designated in Part I, Section 2.2.6.6 no later than the Submission Deadline.** Please be sure

to leave adequate time to get through building security. Proposals received after the indicated date and hour and/or at a different location may not be considered.

5.4 NYCEDC reserves the right, in its discretion, from time to time, to postpone the date for submission and opening of proposals. **Respondents are again reminded to check the Website periodically for updated information, which may include a notice of postponement.** Any proposal submitted prior to such notice may be withdrawn without prejudice.

5.5 Please note that you must respond to this RFP in order to be eligible to be considered for the award of the Contract for the Services pursuant to this RFP.

5.6 For more information, please contact the Recipient **in writing** at the Recipient's Mailing Address or at Recipient's E-mail address, all as identified in Part I, Section 2.2.6.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**EXHIBIT 1
TO
REQUEST FOR PROPOSALS**

CONTRACT DRAFT

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
CONSULTANT CONTRACT
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

CONSULTANT CONTRACT

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
CONSULTANT CONTRACT
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

PART I SPECIFIC TERMS AND CONDITIONS

PART II GENERAL TERMS AND CONDITIONS

PART III APPENDICES

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
CONSULTANT CONTRACT
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**PART I
SPECIFIC TERMS AND CONDITIONS**

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

1. The Contract

- 1.1 **Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
- 1.2 **NYCEDC Contract No.** 33030001
- 1.3 **Contract Date:** The date of the Contract is as of [_____]
- 1.4 **Commencement Date:** [_____]
- 1.5 **Term:** [_____]
- 1.6 **Maximum Contract Price:** [_____]
- 1.7 **Project:** Sherman Creek Waterfront Master Plan
- 1.8 **Allowable Additional Costs:** The Allowable Additional Costs are defined in Appendix B (Scope of Services) and the amount set forth in Appendix C (Payments).
- 1.9 **M/WBE Program Percentages:**
 - 1.9.1 **Target Subcontracting Percentage:** 30%
 - 1.9.2 **Participation Goal:** 30%

2. Parties

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

[ADDRESS: _____]

_____]

[FEDERAL TAX ID# _____]

2.4 Principal: [_____]

2.5 Person in Charge: [_____]

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: General Counsel

with a copy to:

New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: [NAME: _____]

3.2 **Notices to the Consultant:**

[NAME: _____]
[ADDRESS: _____]

Attn: [NAME: _____]

4. **Funding Source** The payments to be made to the Consultant by the Corporation pursuant to this Contract will be made from funds identified below and in accordance with the provisions of Appendix I and K. The Consultant agrees to comply with the provisions of each of such Appendices.

4.1 **Type of Funds:** Environmental Protection Fund

4.2 **Funding Agencies:** New York State Department of State, Division of Coastal Resources.

4.3 **Inspectors:** New York State Department of State, New York State Comptroller's Office, and all those agencies listed in Part II, Section 10.3 below.

4.4 **Applicable Statutes:** See Applicable Agreements.

4.5 **Applicable Agreements:** See Appendix K, Exhibit I – grant agreement between the Corporation and the New York State Department of State, Division of Coastal Resources.

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

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

**NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION**

[INSERT CONSULTANT NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
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**PART II
GENERAL TERMS AND CONDITIONS**

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**PART II
GENERAL TERMS AND CONDITIONS**

The Corporation and the Consultant agree as follows:

**ARTICLE 1
PERFORMANCE OF SERVICES**

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

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

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

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

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

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

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

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

1.4 Authority of Director/Performance of Services.

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

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

1.5 Changes to the Services.

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

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

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

shall either pay such credit to the Corporation or the Corporation may withhold the credit amount from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

1.6 Equipment.

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

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

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

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

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

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

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

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

ARTICLE 2 **COMPENSATION**

2.1 Payments.

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

2.1.2 Requisitions shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.6 and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

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

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

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

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

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

2.2 Miscellaneous Payment Provisions.

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

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

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

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

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

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

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

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

ARTICLE 3 **SUSPENSION OR TERMINATION**

3.1 Delay, Postponement or Suspension of Work.

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

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

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

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

3.3 Defaults and Termination for Cause.

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

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

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

3.4 Effects of Termination for Convenience or for Cause.

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

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

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

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

3.5 Payment Upon Termination.

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

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

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

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

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

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

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

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

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

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

ARTICLE 4

PERSONNEL AND SUBCONTRACTORS

4.1 Personnel.

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

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

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

4.2 Subcontractors.

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

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

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

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

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

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

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

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

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

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

ARTICLE 5

DOCUMENTS AND MATERIALS

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

(i) approved in writing by the Director before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;

(ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and

(iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as

often as the Corporation may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.3 Confidential Information.

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

- (i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- (ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;

(iii) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and

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

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

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

ARTICLE 6

INDEMNIFICATION, CLAIMS AND INSURANCE

6.1 Indemnification of the Corporation and the City.

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

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

6.2 Claims or Actions Against the Corporation.

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

6.2.2 Upon acceptance by the Consultant of the Final Payment to be paid pursuant to this Contract, the Consultant agrees that it shall be deemed to have released the Corporation from any and all claims, causes of action, and liability to the Consultant, its Representatives, successors and assigns, in connection with this Contract or the performance of the Services.

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

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

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

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

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

6.3 Insurance.

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

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

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

Insurance.

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

- (i) be in form and substance satisfactory to the Corporation;
- (ii) be in the minimum face policy amounts set forth in Appendix E;
- (iii) list all individuals and entities identified in Appendix E as Additional

Insureds except in the case of any workers' compensation, automobile liability and professional liability policies required to be maintained hereunder; and

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

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

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

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

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

6.3.8 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder at least thirty (30) days prior to the expiration of any such policy.

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

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

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance, including owner's protective liability insurance, to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as ISO Form CG 00 01 (10/01). The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the

insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation.

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

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

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

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

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

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

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute,

deliver and perform this Contract in accordance with its terms. The Consultant is authorized to do business in the City of New York.

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

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

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

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

7.6 The Consultant is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of the Consultant to receive public contracts. The Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

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

ARTICLE 8

APPLICABLE LAWS, RULES AND REGULATIONS

8.1 New York Law Governs; New York Courts. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by

or against the Corporation arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of New York. To effect this agreement and intent, the Consultant agrees as follows:

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

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

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

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

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

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

8.4 Equal Employment Opportunity/Employment Reports.

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

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

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

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

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

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

8.7 Sales and Use Tax.

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

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

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

8.9 Doing Business Data Form Requirements.

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

8.9.2 The Consultant shall complete and submit a Doing Business Data Form which can be found at www.nycedc.com in the "Available Projects" section. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

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

ARTICLE 9

M/WBE REQUIREMENTS

9.1 M/WBE Program. Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business and lowering contract costs. The Corporation endorses these goals and participation by MBEs and WBEs in the provision of the Services. The following goals and provisions are integral to achieve these goals. The Consultant shall comply with all requirements of the Corporation's M/WBE Program applicable to this Contract.

9.2 Minority and Women -Owned Business Enterprises. In order to be considered M/WBEs for purposes of this Contract, the M/WBEs must have received certification as such by DSBS.

9.3 Target Subcontracting Percentage. The Target Subcontracting Percentage is the percentage of the total Contract that the Corporation anticipates that the Consultant would in the normal course of business award to one or more Subcontractors for amounts under \$1 million. The Target Subcontracting Percentage applicable to this Contract is set forth in Part I, Section 1.12.1. The Consultant shall be subject to said Target Subcontracting Percentage.

9.4 Participation Goal. The Participation Goal is expressed as a percentage that represents the total dollar value of subcontracts under this Contract for amounts under \$1 million to be performed by M/WBEs compared to the total dollar value of all subcontracts under this Contract for amounts under \$1 million. The Participation Goal applicable to this Contract is set forth in Part I, Section 1.12.2. The Consultant shall be subject to the Participation Goal, unless the Corporation grants a modification of this goal pursuant to Section 9.8.

9.5 Consultant's M/WBE Utilization Plan.

9.5.1 The M/WBE Utilization Plan for this Contract is annexed hereto as Appendix L.

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

9.5.3 If this Contract is a multi-year contract, the Consultant shall submit an updated M/WBE Utilization Plan to the Corporation's Chief Contracting Officer 30 days prior to the anniversary of the Commencement Date in each subsequent year during the Contract Term. The Consultant's updated M/WBE Plan shall be subject to the Corporation's approval and must set forth:

- (i) the percentage of work the Consultant intends to subcontract;
- (ii) the percentage of work the Consultant intends to award to Subcontractors for amounts under \$1 million;
- (iii) the identity of all proposed Subcontractors to which the Consultant intends to award subcontracts;
- (iv) in cases where the Consultant intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and
- (v) the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end.

9.6 M/WBE Compliance Reports.

9.6.1 The Consultant shall provide the Corporation with written statements ("M/WBE Compliance Reports"), certified under penalty of perjury, reporting the status of the Consultant's compliance with its M/WBE Utilization Plan as set forth in this Section 9.6.

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

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

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

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

9.6.4 In addition to the foregoing, the Consultant shall submit a final, cumulative M/WBE Compliance Report to the Corporation with its Requisition for Final Payment. The Consultant shall set forth in such final report the information required by Section 9.6.3 in connection with all Services rendered by the Consultant and its Subcontractors during the entire Contract Term.

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

9.8 Modification of the Consultant's M/WBE Utilization Plan. The Consultant may request modification of its M/WBE Utilization Plan after the award of the Contract. The Corporation may grant such request if it determines that the Consultant has established, with appropriate documentary and other evidence, that the Consultant has made all reasonable, good faith efforts to meet the Participation Goal set for the Contract. In making such determination, the Corporation will consider, along with any other relevant factors, evidence submitted by the Consultant showing that the Consultant has, without limitation, and as applicable:

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

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

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

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

- (v) held meetings with MBEs and/or WBEs prior to the date its proposal was due, for the purpose of explaining in detail the scope and requirements of the work for which its proposals was solicited;

- (vi) made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

- (vii) submitted timely written requests for assistance to the Corporation's M/WBE liaison officer and to DSBS;

- (viii) submitted a statement as to how recommendations made by DSBS and the Corporation were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

9.8.2 The Corporation's M/WBE Director and Chief Contracting Officer will provide written notice to the Consultant of the determination.

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

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

Consultant to modify the Consultant's M/WBE Utilization Plan in accordance with Section 9.8), the Corporation may:

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

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

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

ARTICLE 10

MISCELLANEOUS

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

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

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

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

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

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

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

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

10.9 Notices.

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

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

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

10.11 Refusal to Testify.

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

10.11.2 If:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
CONSULTANT CONTRACT
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**PART III
APPENDICES**

APPENDIX A	DEFINITIONS
APPENDIX B	SCOPE OF SERVICES
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APPENDIX D	FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS
APPENDIX E	INSURANCE REQUIREMENTS
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APPENDIX A

DEFINITIONS

APPENDIX A

DEFINITIONS

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

Additional Insured	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific “Applicable Agreements” identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Statutes	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific “Applicable Statutes” identified in Part I
Borough	The City borough where the Project is located
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of June 30, 2005 and the Amended and Restated Maritime Contract between the City and the Corporation, dated as of June 30, 2005, as applicable, as each may be amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or his or her designee
Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4
Comptroller General	The United States Comptroller General

Confidential Information	Any and all information, records, data, materials, documents, electronic files or Work Product provided by NYCEDC and/or the City or any of its agencies to the Consultant except that which (i) shall have otherwise become publicly available through no fault of Consultant or its Representatives; (ii) becomes available to the Consultant on a nonconfidential basis from a source other than NYCEDC, the City or any of its agencies; or (iii) is known by the Consultant prior to its receipt from NYCEDC, the City or any of its agencies without any obligations of confidentiality with respect thereto
Consultant	The entity or person contracted by the Corporation to perform the Services pursuant to this Contract, as identified in Part I, Section 2.3
Consultant's Underlying Intellectual Property	The Consultant's analytical concepts, approaches, methodologies, or formats developed by the Consultant's staff, and to other materials not prepared for delivery to the Corporation and also including any derivatives, improvements, enhancements or extensions of the Consultant's Underlying Intellectual Property conceived, reduced to practice, or developed during the term of this Contract that are not uniquely applicable to the Corporation
Contract	The Contract between the Consultant and the Corporation to which this Appendix A is annexed, as defined in Part I, Section 1.1
Contract Completion Costs	As defined in Section 3.5.3
Contract Date	The date of this Contract, as stated in Part I, Section 1.3
Corporation	New York City Economic Development Corporation, a local development corporation organized pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, ("NPCL") or any successor organized pursuant to Section 1411 of the NPCL
CPL	Contractor Pollution Liability Insurance
DBEs	Disadvantaged Business Enterprises
Director	The person set forth in Part I, Section 2.2, or such other person as may be subsequently designated by the Corporation by Notice

Disability Benefit	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
DCAS	New York City Department of Citywide Administrative Services
DCP	New York City Department of City Planning
DEP	New York City Department of Environmental Protection
Division	Division of Labor Services of DSBS
DOB	New York City Department of Buildings
Doing Business Data Form	The form annexed at Appendix M to be completed by the Consultant and submitted to the Corporation pursuant to LL 34
DOS	New York City Department of Sanitation
DOT	New York City Department of Transportation
DPR	New York City Department of Parks and Recreation
DSBS	New York City Department of Small Business Services
Electronic Funds Transfer (EFT)	Any transfer of funds, other than a transaction originated by check, draft or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct or authorized a financial institution to debit or credit an account
E.O. 50	Executive Order No. 50 (1980), as amended or revised from time to time
Employment Report	Required by Executive Order 50, these reports are to be completed and submitted to the Corporation and can be found at www.nycedc.com
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
FDNY	New York City Fire Department

Federal Courts	United States Federal Courts located in New York City
FHWA	United States Federal Highway Administration
Final Completion	The performance of all Services contemplated in this Contract to the satisfaction of the Director
Final Payment	The last payment by the Corporation to the Consultant under the Contract upon Final Completion or as provided in Part II, Sections 3.5.2 and 3.5.4
Force Majeure	Any of the following acts and events that occur without the negligence or fault, and beyond the reasonable control, of Consultant and that of any of its successors, heirs, assigns, and/or Representatives and of which Consultant has given the Corporation express written notice within three (3) days after the commencement of the alleged cause of the delay, hindrance, or obstruction: governmental preemption in connection with a national emergency, war or act of war, insurrection, riot, act of public enemy, terrorist acts, labor disputes, accidents, mechanical failure and acts of God (including fire, flood or abnormal adverse weather conditions not reasonably anticipatable)
FTA	United States Federal Transit Administration
Funding Agencies	All federal, State or local agencies or entities that are the source of the Funds including, without limitation, any specific "Funding Agencies" identified in Part I
Funds	All funds from the federal, State or local sources to be applied to payments for Services under this Contract including, without limitation, any specific "Funds" identified in Part I
IDA	New York City Industrial Development Agency, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation organized pursuant to Article 18-A of the General Municipal Law of the State of New York
Inspectors	All individuals or entities specifically identified as "Inspectors" in Part I, if any
Insurer	Any insurance company retained by the Consultant pursuant to Part II, Section 6.3.2
Landmarks Preservation	The City of New York Landmarks Preservation

Commission	Commission
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Statutes
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
LPC	City of New York Landmarks Preservation Commission
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MBEs	Minority-owned Business Enterprises
M/WBE Compliance Reports	As described in Part II, Section 9.6
M/WBEs	MBEs and WBEs, collectively
M/WBE Utilization Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1
Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof

Notify	To give a Notice pursuant to Part II, Section 10.9.1
NYCDEP	New York City Department of Environmental Protection
NYCEDC	The Corporation
NYCTA	New York City Transit Authority
NYPD	New York City Police Department
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
OMB	New York City Office of Management and Budget
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
PANYNJ	The Port Authority of New York and New Jersey
Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.4.
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete in the form annexed to this Contract in Appendix I
Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C
Principal	The most senior officer, or member of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4

Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Public Design Commission	Public Design Commission of the City of New York
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity
Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Retainage	Any sum withheld from any payment to the Consultant including, without limitation, those set forth in Part II, Sections 1.5.3, 2.2.1, and 4.2.3.
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B
Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
SHPO	State Historic Preservation Officer
Specific Terms and Conditions	Part I of this Contract
Staff and Fee Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services
State	State of New York

Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
Target Subcontracting Percentage	As defined in Part II, Section 9.3
Term	The time period of this Contract, as stated in Part I, Section 1.5
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
UST	Underground storage tanks
WBEs	Women-owned Business Enterprises
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Work-Made-For-Hire	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101
Work Product	All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, <u>provided however</u> that Work Product shall not include any Consultant's Underlying Intellectual Property

APPENDIX B
SCOPE OF SERVICES

APPENDIX B

SCOPE OF SERVICES

SHERMAN CREEK WATERFRONT MASTER PLAN

I. DEFINITIONS

A. General

All definitions set forth in the Contract (as defined in Appendix A) shall have the same meaning herein unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa, as the context may dictate. The gender used in this Scope of Services shall be deemed to refer to the masculine, feminine, or neuter gender, as the context or the identity of the persons being referred to may require. The captions in this Scope of Services are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Scope of Services or any of the provisions hereof.

B. Additional Definitions

The following terms shall have the following corresponding meanings:

Agencies	DCP, DOT, DPR, HPD, LPC, MBPO, NYPD, NYSDOT, PDC, USACE, (all as defined below), and any other agencies, bureaus, departments, offices, or other discrete entities of the City (as defined below), the State of New York, or the United States that have jurisdiction over any activities carried out in respect of the Services and/or the Project (as defined below).
Allowable Additional Costs	Costs of out-of-pocket expenses which may include the cost of purchasing Project-related industry data, printing, special mailings (such as overnight delivery and messenger services), Services-related long distance telephone and facsimile charges, and any other out-of-pocket expenses, approved in advance by the Director (as defined in Appendix A), on a direct cost basis (with no additional provisions or overhead fee). Allowable Additional Costs shall not include travel to and from the Project Site (as defined below), meals, and those costs considered to be overhead such as normal mailings, local telephone and facsimile charges, in-house copying, secretarial, clerical and typist time and the purchase of office or graphic supplies.
Borough	The Borough of Manhattan.
CB12	Manhattan Community Board 12.
CERCLA	Comprehensive Environmental Response, Compensation and Liability

	Act
City	The City of New York.
Community Groups	Any group of persons, whether or not a legally organized entity under the laws of New York State or any other sovereign state, and whether or not organized on a formal or informal basis, that may assert an interest in the Project.
ConEd	Consolidated Edison Company of New York.
ConED MOU	It is that certain Non-Binding, Indicative Memorandum of Understanding, dated as of April 2, 2007, between the City and ConEd, which sets forth certain understandings on the planning and future redevelopment of the Waterfront, including certain ConEd properties located thereon.
Construction Costs	The anticipated hard construction costs of the Project, including contingency, unless otherwise indicated.
CEQR	The New York Environmental Quality Review, Executive Order No. 91 of 1977, as amended, and the regulations promulgated thereunder at 62 RCNY §5-01 et. seq.
DCP	New York City Department of City Planning
DEC	New York State Department of Environmental Conservation
DEP	New York City Department of Environmental Protection
EIS	Environmental Impact Statement.
FEMA	Federal Emergency Management Agency.

HPD	New York City Department of Housing Preservation and Development.
Interagency Analysis	It is that certain feasibility analysis that the Corporation is conducting in collaboration with DCP and HPD to establish (i) the development potential of the parcels located along the Waterfront, (ii) the feasibility and extent of “inclusionary housing” and Project construction and/or maintenance zoning incentives, and (iii) potential phasing scenarios for the Project.
LPC	New York City Landmarks Preservation Commission.
MBPO	Office of the Manhattan Borough President.
NYPD	New York City Police Department.
NRYP	New York Restoration Project.
NYSDOT	New York State Department of Transportation.
OEC	Mayor’s Office of Operations – Office of Environmental Coordination
PDC	Public Design Commission of the City of New York
Project Site	The Sherman Creek area of Upper Manhattan, as more specifically described Exhibit 1.
SCPW	The Sherman Creek Planning Workshop held in January 31, 2004, as more particularly described herein.
Section	A section of the Waterfront, as identified in Exhibit 1.
SEQRA	New York State Environmental Quality Review Act
Task(s)	A portion of the Services to be provided to the Corporation by the Consultant Team pursuant to the Contract, as described in greater detail herein.
Utilities	Any and all private or public utilities affected by or otherwise interested in the Project, including – without limitation – ConEd.
ULURP	The New York City Uniform Land Use Review Procedures.

USACE U.S. Army Corps of Engineers.

Waterfront The waterfront portion of the Project Site, as more specifically described Exhibit 1.

II. SCOPE OF SERVICES

The Consultant shall provide the following services (the “Services”) which shall include, but may not be limited to, the tasks more fully described below (each, a “Task,” and collectively, the “Tasks”). It is anticipated that the Consultant will complete Tasks 1 through 4, and their accompanying deliverables, in one (1) year, counting from the date of the Notice to Proceed. The Consultant shall not commence Task 3 and Task 5 Services until it the Corporation directs it to do so.

A. Outline of Tasks

Task 1 Preparation and Review

Task 1.1: Preliminary Meetings

Task 1.2: Project Site Conditions

Task 1.3: Base Map

Task 1.4: Work Plan

Task 2 Ongoing Tasks

Task 2.1: Recurring Coordination Meetings

Task 2.2: Community Outreach

Sub-task 2.2.1 Advisory Committee Meetings

Sub-task 2.2.2 Public Charrettes

Sub-task 2.2.3 Other Presentations

Task 3 Environmental Assessments

Task 3.1: Phase I Environmental Site Assessment

Sub-task 3.1.1 Records Review

Sub-task 3.1.2 Site Inspection

Sub-task 3.1.3 Project Site History

Sub-task 3.1.4 Additional Due Diligence

Sub-task 3.1.5 Phase I Report

Task 3.2: Phase II Environmental Site Assessments

Sub-task 3.2.1 Preliminary Site Activities

Sub-task 3.2.2 Field Investigation

Sub-task 3.2.3 Phase II Report

Sub-task 3.2.4 Contaminated Soil Specification and CHASP

Task 4 Conceptual Plan

Task 4.1: Conceptual Design

Sub-task 4.1.1 Precedent Study

Sub-task 4.1.2 Preliminary Options

Sub-task 4.1.3 Final Conceptual Design

Task 4.2: Cost Estimates

Task 4.3: Maintenance Strategy

Sub-task 4.3.1 Maintenance Needs

Sub-task 4.3.2 O&M Cost Estimates

Sub-task 4.3.3 Maintenance Strategies

Task 4.4: Implementation and Phasing Strategy

Task 4.5: Final Report and Executive Summary

Task 5 Regulatory Documents

Task 5.1 Environmental Assessment Statement

Sub-task 5.1.1 EAS Form

Sub-task 5.1.2 Supplemental Environmental Assessment Report

Task 5.2 De-Mapping Application

Sub-task 5.2.1 Application Forms and Drawings

Sub-task 5.2.2 Alteration Map

Sub-task 5.2.3 Mapping Conference

B. Task Description**Task 1: Preparation and Review**

The Consultant shall collect, organize, review, and analyze all available reports, plans, drawings, designs, maps, surveys, agreements, and documents, relative or relevant to the Project Site and/or the Project. Relevant documents include, without limitation, those listed under Exhibit 2. The Consultant shall coordinate with the Corporation in determining the validity/adequacy of the data/information and reconcile the conflicting data/information.

The Consultant shall identify any additional information, not listed under Exhibit 2, but needed to (i) fully assess the historic background, existing conditions, Community Group concerns, and capacity at the Waterfront, and (ii) define the Work Plan (as defined hereinafter). The Consultant shall supplement existing documentary information, as required to assist in the completion of the Services.

To perform Task 1, the Consultant shall complete the following tasks:

Task 1.1: Preliminary Meetings

The Consultant is expected to understand and have a thorough working knowledge of any existing and planned relevant projects in the Project Site and its immediate vicinity, as well as any proposed technical scopes that are relevant to the performance of Task 4 below. As part of developing this working knowledge, it is likely that the Consultant will need to meet with the following entities, at a minimum:

- DCP
- DPR
- DOT
- DEP
- DEC
- NYRP
- ConEd and, to the extent practicable, other property owners in the Project Site and its immediate vicinity
- CB12

Task 1.2: Project Site Conditions

The Consultant shall visit, inspect, and photograph the Project Site as many times as necessary to (i) become familiar with the general and specific nature of the area, including immediate surroundings, general conditions, and current activity, and (ii) identify any existing conditions that may have an impact on the conceptual plan and/or the Project. For use in the Final Report and to inform the conceptual plan, as appropriate, the Consultant shall document current Project Site conditions, including:

- Land ownership/control
- Land and water uses
- Spatial, architectural, urban design, and natural/environmental features and quality thereof
- Site relationships, views, and linkages, especially with respect to the adjoining upland residential area
- General character of the area
- Infrastructure and utilities (land and waterside): location, extent, condition, and capacity
- Pedestrian, non-motorized, and vehicular circulation and connections, especially to the upland residential community
- Configuration of the blocks and lots immediately adjacent to the Waterfront
- Existing Waterfront termini improvements between West 202nd and West 206th Sts.
- Street patterns, transportation, and parking
- Shadows, light, noise, and wind gusts
- Night-time lighting and security conditions
- Flood plain issues
- Shoreline configuration, including the location of the shoreline, bulkhead, or stabilized natural shore for purposes of determining the applicability of zoning regulations.

Task 1.3: Base Map

The Consultant shall prepare a consolidated base map (the “Base Map”) that will be used throughout the duration of the Contract, in documents and during the performance of Task 2 below. The Base Map shall cover the entire Project Site, clearly and accurately showing streets, lots, building footprints, shoreline, as well as identifying key sites within the Project Site.

Task 1.4 Work Plan

Upon receipt of the Notice to Proceed, the Consultant shall prepare and submit to the Corporation for approval, a detailed work plan (the “Work Plan”) for all Services to be performed under the Contract. The Work Plan shall include the following, without limitation:

- detailed listing of all Tasks, sub-tasks, and milestones required to fully provide the Services;
- the time necessary to complete such various Tasks, sub-tasks, and milestones;
- projected target dates to complete the Services, per their component Tasks and sub-tasks; and
- the interrelationship and dependency of the various elements of the Work Plan.

Task 1 Deliverables The Consultant shall provide (a) a comprehensive urban design report containing the findings of the Project Site conditions analysis, which will include a summary of data and background information research, (b) the Base Map, and (c) the Work Plan.

Task 2: Ongoing Tasks

The Consultant and the Corporation shall maintain direct and ongoing communication for the duration of the Services to ensure adequate coordination in the performance thereof and the successful accomplishment of project objectives. The Consultant shall also conduct community outreach on an ongoing basis, as described below.

To perform Task 2, the Consultant shall complete the following tasks, which are intended to run the course of the Contract and will not be considered complete until completion of the Services:

Task 2.1: Recurring Coordination Meetings

Upon receipt of the Notice to Proceed, the Consultant and the Corporation shall set up recurring meetings to coordinate the performance of the Services, and discuss or decide on key issues that are critical to the adequate performance thereof and the successful accomplishment of project objectives. The Corporation and the Consultant shall agree, from time to time, on the appropriate frequency for these meetings, which shall be held for the duration of the Services, at least on a bi-weekly basis. Other agencies and/or members of the Advisory Committee (as defined hereinafter) may attend these coordination meetings if the issues to be discussed and/or decided so require, as the Corporation may determine, from time to time.

Notwithstanding the foregoing meetings, the Consultant shall update the Corporation regularly on the scheduled and actual progress for the Services, including all milestone and completion dates for each Task and sub-task, as well as submittals and approval deadlines.

Task 2.2: Community Outreach

Throughout the Contract, the Corporation expects the Consultant to facilitate direct interaction between Community Groups and Consultant members during community meetings. Only those members of the Consultant essential to the meeting-at-hand should attend. To perform Task 2.2, the Consultant shall complete the following sub-tasks:

2.2.1 Advisory Committee Meetings

The Corporation will create an advisory committee (the “Advisory Committee”) comprised of Agencies, elected officials, Community Groups, local businesses, and interested members of the public to ensure adequate stakeholder engagement and participation in the definition of the conceptual plan. The Advisory Committee will be a forum for stakeholder input and feedback on the different elements of the Project’s conceptual plan.

The Corporation anticipates that the Advisory Committee will hold between four (4) to six (6) meetings over the duration of the Contract. Advisory Committee meetings will be open to the public. The Consultant will assist in leading the meetings, prepare and present Project materials at the meetings and record attendance and the minutes for such meetings. Based on need, materials in English and Spanish may be required, as well as simultaneous English/Spanish translation.

2.2.2 Public Charrettes

In addition to the materials for the Advisory Committee meetings, Consultant shall develop materials for up to two (2) public charrettes (the “Charrettes”) and shall assist in facilitating and presenting Project materials at such Charrettes. At least one (1) of the charrettes will be held to present and seek Advisory Committee and public input/feedback on the two preliminary conceptual design options developed by the Consultant pursuant to Sub-task 4.1.2

Based on the needs of stakeholders, materials in English and Spanish may be required as well as simultaneous English/Spanish translation. The exact number and nature of the Charrettes will be determined in consultation with the Corporation. Following the Charrettes, the Consultant shall prepare a summary identifying how Charrette recommendations may be incorporated into the Project’s conceptual plan.

2.2.3 Other Presentations

In addition to the above meetings, the Corporation anticipates that the Consultant will participate in up to seven (7) presentations to elected officials and Agencies. It is also expected that the Consultant will meet with the PDC once during the course of the project for an informational presentation.

Task 2.2 Deliverables The Consultant shall (a) document the community outreach efforts over the duration of the Contract, (b) develop and provide Project materials for Advisory Committee meetings, Charrettes and other public meetings, as well as produce Advisory Committee meeting

minutes, and (c) produce a summary of ways in which Charrette recommendations may be incorporated into the Project.

Task 3: Environmental Site Assessments

The Consultant shall conduct Phase I and Phase II Environmental Site Assessments (respectively, the “Phase I ESA” and “Phase II ESA’s”) of the City–owned lots located along the Waterfront, as described below. The Consultant shall synthesize the methodology, data, findings, conclusions, and recommendations of such assessments in reports to be used by the Corporation. The Consultant shall also prepare a separate cost estimate of any environmental remediation recommendations that may be posited in the Phase II ESA. The Consultant shall revise or supplement the work product relating to the Phase I ESA or the Phase II ESA’s, as directed by the Corporation and required by DEC upon review thereof, in order to comply with SEQRA, to the extent applicable hereto.

Task 3.1 Phase I Environmental Site Assessments

The Consultant shall perform the Phase I ESA in accordance with the American Society of Testing Materials (ASTM) – *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process* (E 1527-05) in order to satisfy CERCLA ‘due diligence’ regulations, as well as those of Section 9601(35)(b) of the Superfund Amendments and Reauthorization Act, which requires that “all appropriate inquiry” be made into the presence or potential presence of hazardous substances or petroleum products on the subject properties under conditions that indicate an existing release, past release, or material threat of release into structures on the properties, or into the ground, groundwater, or surface water of the properties. The Consultant shall present the findings of the Phase I ESA in a Phase I Environmental Site Assessment Report, as described below.

To perform Task 3.1 the Consultant shall complete the following sub-tasks:

3.1.1 Records Review

The Consultant shall review all environmental record sources (utilizing a computer database search report) to identify the City–owned sites located along the Waterfront that are listed with State and Federal regulatory agencies and are located within established ASTM search guidelines. The Consultant shall identify all potential sources of upgradient and side-gradient sources of contamination which may have adversely impacted the subject site. In addition, the Consultant shall obtain and review (a) Chain of Title and (b) environmental lien search report for each of the City–owned Waterfront lots.

3.1.2 Site Inspection

The Consultant shall perform a site reconnaissance to identify evidence of current or previous recognized environmental conditions (“REC’s”), including –without limitation– underground storage tanks (“UST’s”), neighboring waste sites, polychlorinated biphenyls (“PCB’s”), above–ground storage tanks (“AST’s”), pits, stumps, staining, hazardous material storage, septic/disposal fields and any other evidence of on – site contamination, or threat of a release of contamination.

3.1.3 Project Site History

The Consultant shall perform a historic review of the Waterfront to identify any historic REC's that may be present. To this effect, the Consultant shall obtain and review historical aerial photographs, historical topographic maps, Sanborn Fire Insurance Maps (Sanborn Maps), and historical city directories. In addition, the Consultant shall prepare a historic composite map and associated narrative that illustrates and describes the land use history along the Waterfront and its immediate vicinity.

3.1.4 Additional Due Diligence

The Consultant shall submit Freedom of Information Act ("FOIA") requests and contact appropriate Federal (USEPA), State, and local agencies to determine if there is environmental information available for the City-owned Waterfront lots.

3.1.5 Phase I Report

The Consultant shall prepare a Phase I Environmental Assessment Report for use by the Corporation and the City of New York. The report shall include a presentation of the Consultant's inspections, due diligence, findings, and recommendations, in accordance with all applicable regulations, as noted above. All field notes, photographs, graphics (including –without limitation– the historic composite map described under 3.1.3 above), and other supporting documentation used to develop conclusions will be contained within the report and/or in associated appendices or attachments. The Corporation will review up to two (2) draft reports and provide comments, which the Consultant shall address through revisions to be incorporated into one final report deliverable. The Consultant shall be expected to revise such report, as required by DEP upon review thereof.

3.2 *Phase II Environmental Site Assessments*

If the Phase I report identifies REC's at any of the City-owned lots located along the Waterfront and recommends additional analysis thereon, the Consultant shall undertake Phase II ESA's for each of such lots. The Consultant shall propose to the Corporation the specific number of borings, samples, locations, depths, and other items for the Phase II ESA work, based on the Phase I ESA findings, as well as the existing information on the Project Site, which includes the documents listed in Exhibit 2 hereto. The Consultant shall present the findings of the Phase II ESA's in a Phase II Environmental Site Assessment Report, as described below.

To perform Task 3.2 the Consultant shall complete the following sub-tasks:

3.2.1 Preliminary Site Activities

Prior to undertaking any site work, the Consultant shall coordinate a field investigation program and arrange a contract with a local contractor to complete environmental borings and perform a geophysical survey of the City-owned Waterfront lots. The Consultant shall also coordinate and contract with a certified environmental laboratory to complete the analysis of soil samples.

The Consultant shall prepare and implement a site-specific Health & Safety Plan ("HASP") to address personnel protection standards and mandatory safety practices and procedures prior to implementing the Phase II ESA. The Consultant shall be expected to revise the HASP, as required by DEP upon review thereof, prior to implementing the Phase II ESA.

If applicable, the Consultant shall coordinate the acquisition of necessary sidewalk permits required to complete sidewalk borings and shall attempt to obtain letters from owners for permission to drill on sidewalks associated with their properties, as required for the sidewalk permit. Boring locations where permits cannot be obtained may be relocated to adjacent areas.

3.2.2 Field Investigation

The Consultant shall contact one-call utility mark-out prior to any intrusive work to locate and mark underground utilities and pipes along or in the vicinity of the Waterfront.

The Consultant shall conduct a geophysical survey to screen proposed boring locations for utilities and investigate any existing subsurface structures and UST's (identified as a REC in the Phase I ESA).

Per a sampling plan to be proposed to and accepted by the Corporation, the Consultant shall perform borings in several locations at the City-owned lots located along the Waterfront. The termination depth of each boring will be determined by the proposed excavation depth required to build the Project. The boring locations shall enable the collection of samples representative of the spatial extent of the Project Site, in order to investigate the potential impacts to proposed excavation areas from all REC's identified in the Phase I ESA.

The Consultant shall also propose to the Corporation, and the Corporation shall accept in writing, the manner in which soil samples will be collected, the drilling equipment that will be used, the field log content, the number of soil samples that will be collected for laboratory analysis and the methodology thereof, and the manner in which boring locations will be backfilled. As some of the City-owned lots located along the Waterfront are partially underwater and part of the Project may be developed thereon, the Consultant may be required to assess the sediment quality of the underwater portions of such lots. The Consultant shall propose to the Corporation, and the Corporation shall accept in writing, the methodology in which such sediment samples will be collected and analyzed. The Consultant shall be expected to revise the aforementioned scope of work and methodology, as required by DEP upon review thereof, prior to carrying out the said work.

The Consultant shall ensure that a New York State Department of Health certified laboratory analyzes the samples.

3.2.3 Phase II Report

The Consultant shall prepare a Phase II Environmental Assessment Report for use by the Corporation. The report shall include all data that the Consultant collected during the investigation, including the geophysical survey findings. The report shall include tables that summarize the sample data and compare the results to applicable regulatory standards. The report shall provide conclusions regarding potential soil contamination in areas of proposed soil disturbance and recommendations for further remedial action, if necessary. The Consultant shall be expected to revise the said recommendations, as required by DEP upon review of the Phase II Report.

3.2.4 Contaminated Soil Specification and CHASP

The Consultant shall prepare a contaminated soil management specification that will address storage, handling, transport, and disposal of contaminated soil. The specification will address contaminated soil that is identified by the Phase II Report and contaminated soil potentially missed by the Phase II report that can reasonably be anticipated to be encountered (historic fill and petroleum contaminated soil).

The Consultant shall prepare a Construction Health and Safety Plan (“CHASP”) to address workplace safety and health and emergency response procedures related to the handling of impacted soil during excavation activities. The CHASP shall present soil suppression techniques and other construction health and safety requirements (monitoring, sampling, PPE, etc.) to be implemented during excavation activities. The Consultant shall be expected to revise the CHASP, as required by DEP upon review thereof.

Task 3 Deliverables The Consultant shall prepare (a) a Phase I Report for the City-owned sites located along the Waterfront, in the manner and covering the content described in 3.1.5 above; (b) a Phase II ESA sampling plan (for above and underwater locations) to be approved in writing by the Corporation, that details the specific number of borings, samples, locations, depths, and other items for the Phase II ESA work, based on the Phase I ESA findings, as well as the existing information on the Project Site; (c) a Phase II Report for each of the City-owned lots located along the Waterfront where the Phase I Report recommends additional analysis and testing; (d) a contaminated soil management specification and a CHASP, as described in 3.2.4 above; and (e) a preliminary estimate of the costs associated with the implementation of remediation measures recommended in the Phase II Report.

Task 4: Conceptual Plan

The Consultant shall perform this Task in close collaboration with the Corporation, especially with respect to the Interagency Analysis, as the findings of such analysis will be a key input for the Consultant’s deliverables for this Task.

Task 4.1: Conceptual Design

The Consultant shall prepare a conceptual design of the Project. The conceptual design shall establish the basic urban, architectural, landscape architectural, and engineering design criteria for the Project, and shall be cognizant of and respond to the constraints posed or opportunities afforded by the Project Site, as ascertained or discovered during the performance of all preceding Tasks. To perform Task 4.1, the Consultant Team shall complete the following sub-tasks:

4.1.1 Precedent Study

The Consultant shall identify and conduct a precedent study of at least two (2) comparable waterfront esplanades developed in urban environments similar to the Project Site and with design, maintenance, implementation, and programming challenges similar to the Project.

At least one (1) of the examples should deal with the comprehensive redevelopment of an urban waterfront through the creation of a new public waterfront esplanade or park and the development of new residential and/or mixed-use projects in its vicinity.

The examples should provide insight into the principles and planning tools used to:

- Integrate these new uses into a comprehensive, cohesive, and consistent urban environment;
- Define the footprint and massing of new development in the immediate vicinity of the waterfront amenity; and
- Combine passive and active open recreation areas and concession opportunities necessary to activate the waterfront.
- Outline programming, management, maintenance, and revenue – generating strategies.

To the extent possible, the Consultant shall conduct this study simultaneously with the Project Site conditions analysis described in Task 1.2 above, as the findings of one analysis may influence the outcomes of the other.

4.1.2 Preliminary Options

Based on the project objectives, as well as public and Advisory Committee input, and the results of the preceding Tasks, the Consultant shall first develop two (2) preliminary conceptual design options.

To develop the preliminary design options the Consultant shall (a) take into account the key considerations and (b) follow the preliminary option development process outlined below.

(a) Key Considerations:

Category	Description
Spatial	• Local history. • Aesthetics and context. • Location, extent, and quality of public space in relation to the properties located along the Waterfront. • Important vistas to be maintained or enhanced.

Planning	• The findings of the Interagency Analysis, as it will be the basis to determine the size, scope, and phasing of the Project. • Ongoing, planned, and/or anticipated public and/or private development activity within or in the vicinity of the Project Site. • Project requirements, taking into account (a) overall impact, (b) cost, (c) maintenance, (d) consistency with the existing DPR Waterfront park/open space palette, (e) phasing, (f) required Waterfront infrastructure construction and/or rehabilitation work (i.e. bulkhead, shoreline, piles, piers), (g) potential reuse of existing infrastructure, (h) programming, and (i) revenue-generation opportunities. • Advisory Committee and public input/feedback. • Drainage and storm water retention. • Signage, urban furniture, and materials that are appropriate for the Project's intended uses. • Safety as it relates to (i) pedestrian, bicycle, and roller blade flows to and within the Project at multiple times of the day, and (ii) adequate lighting and design that incorporates security considerations. • Flexibility in design to allow for appropriate changes over time. • Alternative materials, systems, and equipment based on their appropriateness, cost, water and energy efficiency and sustainability, ease of maintenance, durability, "replaceability," aesthetics, site disturbance; low maintenance, and use of recycled materials. The Consultant shall give special consideration to and provide suitable materials for all equipment, devices, plantings and all other design elements that will be exposed to the corrosive Waterfront environment. • Financial feasibility and practicability of FEMA flood hazard avoidable risk reduction measures, as applicable. • Seismic analysis, as applicable.
Regulatory	• Applicable site utility and fire protection requirements. • Applicable design and waterfront regulations in the New York City Zoning Resolution. • Applicable Americans with Disabilities Act requirements.

	• Applicable requirements of the American Association of State Highway and Transportation Officials Guide for Development of New Bicycle Facilities, 1981 (AASHTO Guide) or approved equivalent. • Applicable Federal, State, and City laws, rules and/or regulations, including the Charter of the City of New York and any other applicable provisions of the City's Administrative Code, as well as City and State requirements and regulations.
--	--

(b) Process:

1. The Consultant Team shall develop user-friendly visuals that depict the preliminary conceptual design options that are being proposed. These visuals shall include schematic plan views, together with typical cross section views showing the interrelationship between the various elements, as well as the existing and proposed utilities. Illustrative streetscape views, including perspectives shall be shown, as required, demonstrating the interrelationship of the distinctive design elements and the overall effect of the Project to the pedestrian environment. The format, size, and scale of the plans and cross-sectional views shall be as approved by the Corporation.
1. The Consultant shall present these options, along with a preliminary implementation strategy thereof, at a Charrette to elicit Advisory Committee and community input/feedback on a preferred conceptual design option. The Consultant Team shall also present general a general analysis of the pros and cons of each option with respect to costs and benefits, technical and financial feasibility, and long-term sustainability.
2. To present these preliminary options, the Consultant shall prepare informational materials that may include, without limitation, Project fact sheets, presentation boards, a model, hand sketches, or other graphics, as directed by the Corporation.
3. The Consultant shall revise the conceptual design of the selected option to incorporate the Advisory Committee and public input/feedback, to the extent feasible.
4. The Consultant shall present the selected conceptual design to elected officials, Agency principals, the Advisory Committee, and record and evaluate their comments to enhance the Project.

4.1.3 Final Conceptual Design

The final conceptual design shall be understood as the selected design option that incorporates, to the extent feasible, the stakeholder comments described under 4.1.1(b)(3) and (4) above, as directed by the Corporation. The Consultant shall present the final conceptual design to the Advisory Committee and the public. To this effect, the Consultant shall develop/refine user-friendly sketches and graphics that depict the final conceptual design. It is anticipated that this will include approximately four (4) boards showing plans, elevations, materials selection, and

any other information needed to clearly describe the scale and relationship of all proposed Project elements to the general public. The Consultant shall also present the final conceptual design at a PDC “Preliminary Draft Plan” review session, following the applicable submission guidelines.

The Corporation may provide direction on a phasing strategy that determines which portions of the conceptual design will be further developed during the schematic design phase. Notwithstanding the foregoing, the Project shall be designed so that, should portions thereof be removed through this scope/budget evaluation process, it will continue to be a comprehensive and cohesive capital improvement.

Task 4.1 Deliverable: The Consultant shall prepare (a) a presentation containing the precedent study findings, (b) two (2) preliminary design options, (c) a final conceptual design, and (d) PDC application and presentation materials.

Task 4.2: Cost Estimates

The Consultant shall provide order-of-magnitude Construction Cost estimates for the final conceptual design. Estimates shall be broken down into unit cost and/or lump sum assumptions for the various components of the Project. The Consultant shall provide estimated quantities and a breakdown of the Project anticipating that the Project will be phased over time and that costs will need to be recalculated based on the quantity estimates of the phase to be advanced. The Consultant shall also take into account in its cost estimates (and the quantity-based breakdowns thereof) any mitigation that may be required in conjunction with the Project.

Task 4.2 Deliverable: The Consultant shall prepare a final Construction Cost estimate.

Task 4.3: Maintenance Strategy

Long-term stewardship of the Project is a critical component to its success. The Consultant shall collaborate with the Corporation to develop a maintenance strategy for the Project that will ensure a lasting community resource for area residents, businesses, and visitors. To this effect, the Consultant shall identify the maintenance needs of the final conceptual design and estimate the annual operations and maintenance (“O&M”) costs of such design, all in accordance with current DPR standards. The Consultant shall also provide advice on potential maintenance strategies. To perform Task 4.3 the Consultant shall complete the following sub-tasks:

4.3.1 Maintenance Needs

The Consultant shall identify the major maintenance items of the final conceptual design, specifying those that meet applicable Agency standards/palette and those that do not. This identification of maintenance items shall be the basis of the O&M cost estimates described below.

4.3.2 O&M Cost Estimates

The Consultant shall prepare a detailed O&M cost estimate for the final conceptual design identified in Task 4.1. To prepare its O&M cost estimate, the Consultant shall use standard assumptions regarding basic maintenance costs, breakout portions of basic and additional maintenance costs, include background annual cost escalations for materials and labor,

and evaluate needs for creating a capital reserve fund. The Consultant shall explicitly account for any elements requiring maintenance, including – without limitation – graffiti removal, signs, trash removal, lighting, paving, site furniture, landscaping, snow removal, pest control, and utilities. The O&M estimate shall have built-in flexibility to facilitate sensitivity analyses based on differing levels of maintenance.

The Consultant shall project an aggregated total of fifteen (15) years of baseline O&M costs and additional O&M costs associated with the Project. Cost projections shall accommodate for any costs that could be offset by leveraging the contributions of non-City O&M sources, per the findings of the Interagency Analysis, and explicitly include any cost implications of “green” maintenance practices. The Consultant shall review the conclusions of the O&M cost estimate with the Corporation and the Advisory Committee, as directed by the Corporation, and address all comments and concerns.

4.3.3 Maintenance Strategies

The Consultant shall research at least two (2) relevant O&M best practices for initiatives that present challenges and opportunities comparable to the Project. Based on this research, the Project’s maintenance needs and the O&M cost estimates, the Consultant shall identify up to three (3) strategies for ongoing Project maintenance and operations. The Consultant shall consider mechanisms that may involve City and State Agencies and private/public partnerships. The Consultant shall review the strategies with the Corporation and the Advisory Committee, as directed by the Corporation, and address all comments and concerns.

Task 4.3 Deliverable: The Consultant shall prepare a maintenance report for the Project containing (a) identification of major maintenance items and their conformance to applicable agency standards/palette, (b) the O&M cost estimates thereof, (c) a summary of up to three (3) maintenance strategies that could be implemented for the Project, and (d) an aggregated 15-year financial analysis of the basic and additional maintenance needs for the Project.

Task 4.4: Implementation and Phasing Strategy

The Consultant shall assist the Corporation in developing an implementation and phasing strategy that considers the findings of the Interagency Analysis, as it will be the basis to determine the size, scope, and phasing of the Project.

The Consultant shall include within its implementation and phasing strategy an estimated implementation schedule for executing the final conceptual design, including further design development work and any additional studies, investigations, regulatory requirements (including any mitigation that would be required during the Project’s approval process), and site preparation work needed for implementation.

Task 4.4 Deliverable: The Consultant shall prepare an implementation and phasing strategy report for the final conceptual design. This report shall include (a) a phasing plan, (b) an implementation schedule, (c) an explanation of the key issues to be addressed in order to ensure the successful implementation of the proposed conceptual design (including any applicable regulatory issues), and (d) a set of recommended actions to address such issues and implement the Conceptual Plan.

Task 4.5: Final Report and Executive Summary

The Consultant shall complete a final report that synthesizes the work completed in Tasks 1, 2, 3, and 4 into a final report (the “Final Report”). The Final Report contents shall be conveyed in a graphically appealing format. Specific contents shall include the following:

- The conceptual plan, which shall incorporate and integrate the Project’s final conceptual design. The conceptual plan shall be the primary program document for the Project and will form the foundation for its design and development. The conceptual plan shall include:
 - (a) All drawings, sketches, maps, and graphics necessary to convey the final conceptual design of the Project and its inter-relationship with the Project Site, and specifically, with the footprint and building envelope of the properties immediately adjacent to the Project,
 - (b) The Construction Cost estimates,
 - (c) The O&M cost estimates, and
 - (d) The implementation and phasing strategy.

The Final Report shall be in a format approved in advance by the Corporation. The Consultant shall also prepare a stand-alone Executive Summary synthesizing the major features of the final conceptual plan and the process involved in its development (the “Executive Summary”) in a format approved in advance by the Corporation.

Task 4.5 Deliverable The Consultant shall provide the Final Report and the Executive Summary in hard copy and electronic format. The Executive Summary shall be in English and Spanish. The Consultant shall print five hundred (500) copies of the Final Report and one thousand (1,000) copies of the Executive Summary.

Task 5 Regulatory Documents

5.1 Environmental Assessment Statement

The Consultant shall prepare the Project’s Environmental Assessment Statement (“EAS”) Form and Supplemental Environmental Assessment Report to accompany the EAS, all in accordance with applicable CEQR Technical Manual requirements and guidelines, standard professional practice, and –to the extent applicable– SEQRA. These documents will set forth the projected impacts of implementing the Project and shall be acceptable to the Corporation. To complete this Task 5, the Consultant shall complete the following sub-tasks:

5.1.1 EAS Form

The Consultant shall include the following items in the EAS Form:

- *Project Site Description*: A brief description of the Project Site indicating land use, current uses, and a description of general setting. The Consultant shall develop maps to illustrate the information presented in this description.

- *Zoning*: A zoning map and summary of major district regulations along the Waterfront.
- *Additional Studies and Information*: Based on CEQR criteria and the information provided on the Project, the Consultant shall include in this section of the EAS Form a list of the analyses that would be required to supplement the information provided on the EAS form.

5.1.2 Supplemental Environmental Assessment Report

The Consultant shall prepare a Supplemental Environmental Assessment Report that discusses the assessment areas delineated in the CEQR Technical Manual.

5.2 *De-Mapping Application*

The Consultant shall prepare the ULURP application requesting the de-mapping of several un-built streets from the City Map (as defined in the New York City Charter, as amended). To complete this Task, the Consultant Team shall complete the following sub-tasks:

5.2.1 Application Forms and Drawings

The Consultant shall prepare all of the de-mapping application forms and drawings, as required under applicable DCP specifications and ULURP regulations.

5.2.2 Alteration Map

The Consultant shall prepare the MBPO's alteration map.

5.2.3 Mapping Conference

Once the de-mapping application is filed, the Consultant shall attend the corresponding mapping conference and prepare the alteration map incorporating all Agency comments. The survey material needed for the de-mapping shall be the topographic and utility survey of the Project Site that was completed in 2004, which the Corporation shall furnish to the Consultant.

Task 5 Deliverables: The Consultant shall prepare (a) the EAS Form and its accompanying maps, (b) the Supplemental Environmental Assessment Report and associated technical analyses, (c) all of the required de-mapping application forms and drawings under applicable DCP specifications and ULURP regulations, and (d) a final MBPO alteration map that incorporates all Agency comments during the mapping conference.

IV. GENERAL ADMINISTRATIVE REQUIREMENTS

1. The Consultant shall coordinate and manage the appropriate members of the Consultant Team to provide the Services when and where appropriate and directed by the Corporation.
2. The Consultant shall maintain continuous communication with the Corporation and shall furnish to the Corporation copies of all correspondence related thereto. The Consultant shall cooperate with the Corporation in the Consultant's preparation of reports and minutes of bi-weekly project meetings and all public meetings.

2. The Consultant is expected to submit the Work Plan to the Corporation at the onset of the Project. Upon the Corporation's approval of the Work Plan, the Consultant shall commence the Tasks. As directed by the Corporation, the Consultant shall share all information related to the project with Corporation. The Consultant shall be expected to manage this process of communication and to present Project progress and provide a forum for review and feedback. Methods of communication include, but shall not be limited to:
 - a. Kick-off meetings with the Corporation and other Agency representatives
 - b. Regular working group sessions; a minimum number of these meetings must be in-person, and generally shall be held on at least a bi-weekly basis; and
 - c. As directed by the Corporation, presentation of final results to certain Community Groups, the Corporation, as well as other Agencies.
3. The Consultant shall arrange meetings and presentations as requested by the Corporation and shall provide necessary data and materials for such meetings.
4. The Consultant shall prepare and provide all relevant drawings, materials and other work product necessary to meet project objectives.
5. The Consultant shall include on all materials printed, constructed, and/or produced the following acknowledgement:

"This (document, report, map, etc.) was prepared for the New York State Department of State Division of Coastal Resources with funds provided under Title 11 of the Environmental Protection Fund."
6. In addition, the Consultant shall place on the New York State Comptroller's Contract Number ("CCN"). The Corporation shall supply the Consultant with the CCN when it is available.
7. For all materials printed, constructed, and/or produced pursuant to the Services, the Consultant shall provide the following:
 - Draft products: two paper copies of each product.
 - Final products: two paper copies of each product. In addition, all final products (including reports, designs, maps, drawings, and plans) must be submitted as an electronic copy (in Adobe® Acrobat® Portable Document Format - PDF), created using a minimum 300 dpi scanning resolution, and be submitted on a labeled CD-R type CD. The CD must be labeled: "NYCEDC, **[CCN – to be given to the Consultant when available]**, Sherman Creek Waterfront Master Plan."
 - For pictures and photographs, the consultant must provide the date the picture was taken along with a caption stating the location of the picture or photograph and a brief description of the activity being documented.

8. The Consultant shall revise and correct, without any additional compensation therefore, any and all reports, documents, surveys, and designs until same shall receive final approval by the Corporation. The Consultant shall initiate all actions for incremental review of proposed initiatives, including any follow-up meetings as required to expeditiously resolve all questions and concerns and to obtain required approvals.
9. The Consultant shall identify, consult and coordinate with any specialty regulatory Agencies that may have an interest in the Project.
10. The Consultant shall perform the Services and produce and deliver all work product with reference to and in conformity with information and data as to existing and legal lines and grades (or approved changes in legal grade), approved drainage plans, sewers, subsurface structures and conditions and facilities, such as may be furnished by the Corporation and/or from any Agencies, Utilities and other sources, as well as such information as may be obtained through site inspection of the Project Site and from topographical and utility surveys and subsurface investigations. It shall be the Consultant's responsibility to verify, identify and/or request all such data as may be required for planning proper coordination and implementation of the Project. The Consultant will be responsible for data based on existing conditions, for additional work that may be incorporated into the contract documents and for materials needed to complete the scope of the Project.
11. The Consultant shall complete the Services in conformity with all available existing information and data including existing and legal lines and grades (or approved changes in legal grade), approved drainage plans, sewers, and subsurface structures and conditions. It shall be the Consultant's responsibility to obtain all such data as may be required to complete the Services. It shall be the Consultant's responsibility to secure all available data as may be required for the informed planning and appropriate conceptual design of the Project.
12. The Consultant shall obtain and compile all pertinent specifications, standards and constraints mandated for the Project by any Agency or Utility. All plans and specifications shall conform to the standards and specifications of any such Agency and Utility.

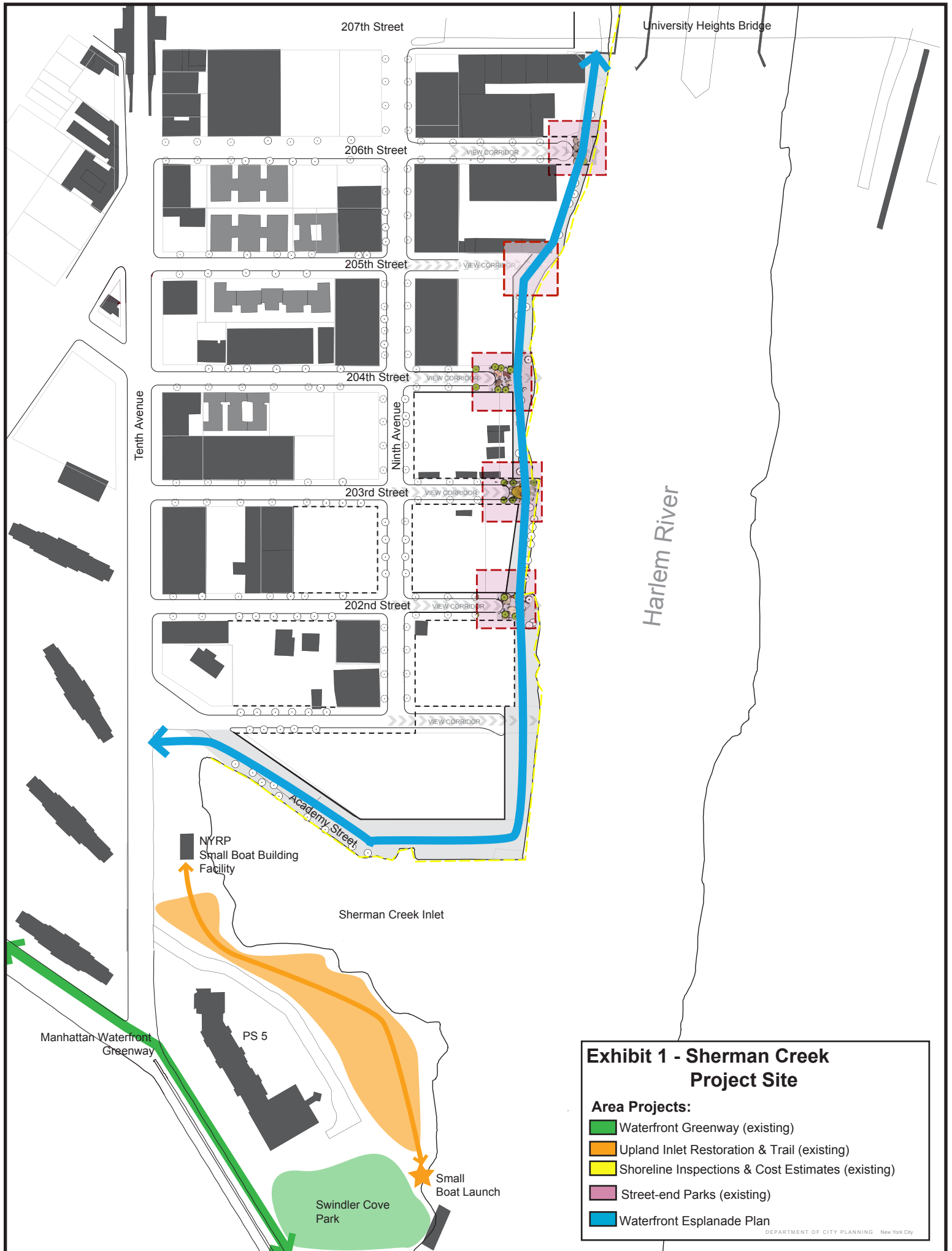
V. EXHIBITS TO APPENDIX B

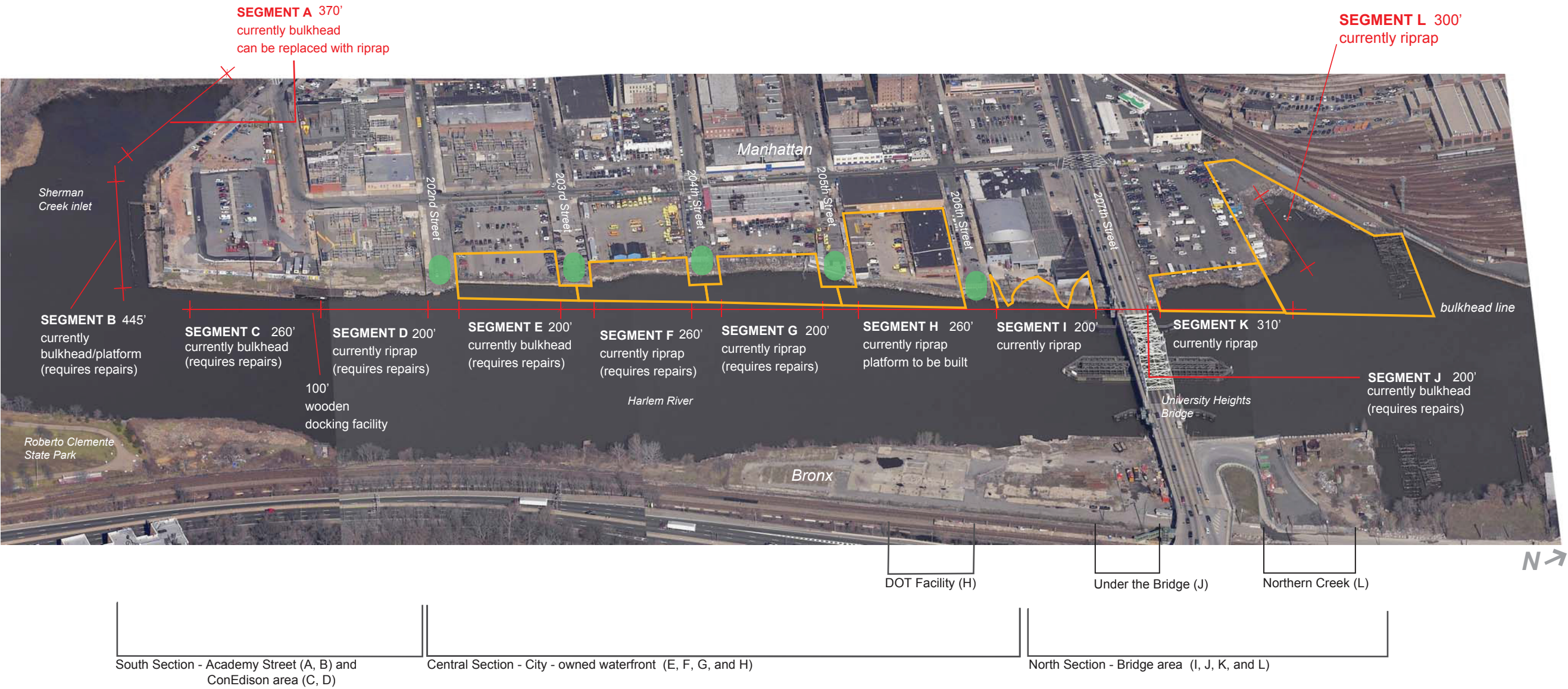
Exhibit 1: Project Site map and Waterfront Sections map

Exhibit 2: Existing Documentation – **SEE VOLUME II OF THE RFP.**

APPENDIX B
EXHIBIT 1

Project Site map and Waterfront Sections map





-  City owned property
-  Street-end park

Exhibit 1 - Sherman Creek Waterfront Sections

APPENDIX B
EXHIBIT 2

SEE VOLUME II of II OF THE RFP
Existing Documentation

- Item 1: Sherman Creek Development Project, prepared by Roberta Washington Architects, P.C., on behalf of the Port Authority of New York and New Jersey and the Office of the Manhattan Borough President C. Virginia Fields, dated as of July 2000.
- Item 2: SCPW planning document and its synopsis, dated as of 2004.
- Item 3: Site Investigation Report – Phase II Environmental Site Assessment for the Former Sherman Creek Generating Station Site (Block 2183, Lot 1, at West 201st St.), conducted by LMS Engineers, January 2000.
- Item 4: Limited Phase II Site Investigation Report for Block 2183, Lot 1, at West 201st/Academy St., conducted by Metcalf & Eddy – Aecom in July 2004.
- Item 5: Topographic and utility survey of the Project Site, dated as of November 29, 2004, performed by Mercator Land Surveying, LLC.
- Item 6: Limited Phase II Site Investigation for the St. Ends of West 201st – 206th Sts., along the Harlem River, conducted by Metcalf & Eddy – Aecom in July 2005.
- Item 7: Flood Insurance Rate Map of the Project Site (#3604970081F; Panel 81 of 457), dated as of October 20, 2006.
- Item 8: Condition inspection and evaluation of the waterfront structures and tunnels, along Sherman Creek and the Harlem River, from the near intersection of West 201st St. and Academy St. to 208th St., conducted by HPA Engineers, P.C. in December 2006.
- Item 9: Rapid-level above-water investigation of the shoreline along the Harlem River between West 215th St. and West 220th St., conducted by HPA Engineers P.C. in December 2006.
- Item 10: Subsurface geotechnical investigation and preliminary evaluations for replacement of the Sherman Creek waterfront structures located between Academy St. and West 201st St., conducted by HPA Engineers P.C. in January 2007.
- Item 11: USACE Hudson-Raritan Estuary Ecosystem Restoration Project status report.
- Item 12: Non-Binding, Indicative Memorandum of Understanding, dated as of April 2, 2007, between the City of New York and ConEd.
- Item 13: DEP water main maps for various parts of the Project Site.

APPENDIX C

PAYMENTS

APPENDIX C

(OPTION 1)

[INSERT WHERE PAYMENT IS BASED ON PERCENTAGE OF SERVICES COMPLETED]

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

Interim payments shall be made to the Consultant. The interim payments will be made no more frequently than once a month in an amount equal to the Percentage of Completion of each Portion of the Services, multiplied by the Maximum Payment for each Portion performed during the billing period, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs as such costs accrue.

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

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

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

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

APPENDIX C

(OPTION 2)

[INSERT WHERE PAYMENT IS BASED ON HOURLY RATES:]

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

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

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

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

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

No multiplier overhead, administrative fee or other mark up will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs. Except as may permitted under Part II, Section 2.2.1 of the Contract.

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

EXHIBIT 1 TO APPENDIX C

(OPTION 1)

PAYMENT SCHEDULE

SAMPLE; TASKS SET FORTH BELOW ARE EXAMPLES ONLY

Task	Maximum Payment
<i>Task 1 – Concept Development and Review</i>	
Information Gathering	\$
Analysis and Surveys (including Utilities)	\$
Conceptual Design	\$
Concept Book	\$
Task 1 Total	\$
<i>Task 2 – Schematic Design</i>	
Three Schematic Designs	\$
One Schematic Design	\$
Schematic Book	\$
Task 2 Total	\$
<i>Task 3 – Preliminary Design Development</i>	
Preliminary Design Development	\$
Agency Approvals	\$
Preliminary DD Package	\$
Task 3 Total	\$
<i>Task 4 – Final Design Development</i>	
Final Design Development	\$
Final Design Development Package	\$
Additional Documents	\$
Task 4 Total	\$
<i>Total Tasks 1-4</i>	\$
<i>Allowable Additional Costs</i>	\$
Total Amount	\$

EXHIBIT 1 TO APPENDIX C

(OPTION 2)

STAFF AND FEE SCHEDULE

SAMPLE, POSITIONS AND OFFICES ARE EXAMPLES ONLY

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

EXHIBIT 2 TO APPENDIX C

EFT ENROLLMENT FORM



NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT) VENDOR PAYMENT ENROLLMENT FORM

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

Mail to: New York City Economic Development Corporation, 110 William Street, 4th Floor, New York, NY 10038
Attention: Christine Nicastro or Fax to: 212-312-3914

SECTION I – VENDOR INFORMATION

1. SOCIAL SECURITY NUMBER OR TAXPAYER ID NUMBER:
(AS IT APPEARS ON W-9 FORM)

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2. VENDOR NAME (AS IT APPEARS ON W-9 FORM);
(AS IT APPEARS ON W-9 FORM)

3. VENDOR'S PRIMARY ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON NAME:

6. CONTACT PERSON TELEPHONE NUMBER:

SECTION II – FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:

2. ACCOUNT NAME:

3. BANK NAME:

4. BANK BRANCH ADDRESS:

5. ROUTING TRANSIT NUMBER:
(LOCATED AT THE BOTTOM OF YOUR CHECK)

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6. ACCOUNTING TYPE: (CHECK ONE)

☐

CHECKING

☐

SAVINGS

7. DIRECT DEPOSIT/ACH/EFT COORDINATOR'S NAME:

8. TELEPHONE NUMBER:

SECTION III – VENDOR SIGNATURE

VENDOR SIGNATURE

PRINT NAME

DATE



NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

DIRECT DEPOSIT/ELECTRONIC FUNDS TRANSFER (EFT)

VENDOR PAYMENT ENROLLMENT FORM

GENERAL INSTRUCTIONS

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

New York City Economic Development Corporation, 110 William St.,
New York, NY 10038 – Attention: Christine Nicastro or Fax to: 212-312-3914.

SECTION I – VENDOR INFORMATION

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

SECTION II – FINANCIAL INSTITUTION INFORMATION

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

SECTION III – VENDOR SIGNATURE

Sign and date where indicated.

APPENDIX D

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

APPENDIX D

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

STATE OF _____)
) ss.:
COUNTY OF _____)

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

1. I am the Principal of the Consultant named below in connection with the contract (the "Contract") identified below between the Consultant and New York City Economic Development Corporation ("NYCEDC").
2. I make this affidavit pursuant to Section 5.2.6(iii) of the Contract to verify certain information regarding non-original materials included in the Work Product (as defined in the Contract) furnished by the Consultant to NYCEDC pursuant to the Contract.
3. I hereby certify that the information set forth on the "List of Rights, Limitations and Requirements Regarding the Use and Display of Non-Original Materials Included in Consultant's Work Product" (the "Non-Original Materials List") annexed hereto and made a part hereof, and the licenses, releases, permissions, clearances and other documents (collectively, the "Licenses") annexed thereto, are complete, true and accurate as of the date of this affidavit, and I acknowledge and understand that NYCEDC shall rely thereon in connection with any use and display of such materials.
4. In particular, I hereby certify that the annexed Non-Original Materials List and Licenses set forth (i) all non-original materials included in Consultant's Work Product; (ii) all information as to the source of such materials; (iii) all information as to any durational limitations on use of such materials; (iv) all requirements as to notices that must be displayed in connection with display, including the specific owner of the rights to be credited; and (v) all other limitations on the use and display under the Licenses.

Dated: _____ Signature: _____

Consultant: _____ Printed Name: _____

NYCEDC Contract No.: _____ Title: _____

Sworn to before me this
day of _____, 20____

Notary Public

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

[illegible]

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

APPENDIX E

INSURANCE REQUIREMENTS

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

APPENDIX E

INSURANCE REQUIREMENTS

1. Required Policies and Amounts

Workers' Compensation/
Disability Benefits:

In statutory amounts

Employer's Liability:

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

Commercial General
Liability (including Owner's
Protective Liability):

The minimum combined single limit per occurrence shall be \$1,000,000, with an annual aggregate of not less than \$2,000,000 in the aggregate.

The maximum deductible or self-insured retention ("SIR") for the Commercial General Liability policy shall be \$10,000.

Automobile Liability:

\$1,000,000

Umbrella/Excess Liability:

On a per occurrence and aggregate basis, and shall be excess of primary general, automobile and employer's primary liability limits.

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

Professional Liability Insurance:

Professional liability insurance ("PL") policies shall be written with a minimum amount of \$1,000,000 per claim and \$2,000,000 in the aggregate.

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

APPENDIX E

INSURANCE REQUIREMENTS

2. Additional Insureds

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

New York City Economic Development Corporation
The City of New York
The State of New York

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

APPENDIX E

INSURANCE REQUIREMENTS

3. Required Provisions

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

“A. Notices from the insurer (the “Insurer”) to the New York City Economic Development Corporation (the “Corporation”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, New York City Economic Development Corporation, at 110 William Street, New York, New York 10038 (with a copy to the Corporation’s Contract Administrator at the same address), and to the Commissioner, New York City Department of Small Business Services, at 110 William Street, New York, New York 10038 or such other addresses as may be specified by the Corporation;

B. The Insurer shall accept notice of accident from the Corporation or the City, within 120 days after receipt by an official of such Additional Insured (as identified in Appendix E of the Contract between the Corporation and the Consultant to which this policy applies) of notice of such accident as valid and timely notice under this policy;

C. The Insurer shall accept notice of claim from the City within 120 days after such claim has been filed with the Comptroller of the City and notice of claim from the Corporation, within 120 days after receipt by such party as valid and timely notice under this policy;

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

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

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

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

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

APPENDIX E

INSURANCE REQUIREMENTS

4. Sample Form of Insurance Certificate

ACORD. CERTIFICATE OF INSURANCE

ISSUE DATE (MM/DD/YY)

11/11/11

PRODUCER

Insurance Broker's Name
Address

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY LETTER **A** General Liability Company

COMPANY LETTER **B** Auto Liability Company

COMPANY LETTER **C** State Insurance Fund

COMPANY LETTER **D** Professional Liability Company

COMPANY LETTER **E** Builders Risk Company

INSURED

Your Firm's Name
Address

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. TR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	S GENERAL LIABILITY A ☒ COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR OWNER'S & CONTRACTOR'S PROT.	Insurance Policy #	11/11/11	22/22/22	GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG. \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ MED. EXPENSE (Any one person) \$
	A X Additional Insureds—City of New York; New York City Economic Development Corp.; and Apple Industrial Development Corp.				
	B X AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY	Insurance Policy # M	11/11/11	22/22/22	COMBINED SINGLE LIMIT \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	P EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE \$ AGGREGATE \$
	L C WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY	Insurance Policy #	11/11/11	22/22/22	X STATUTORY LIMITS EACH ACCIDENT \$ DISEASE—POLICY LIMIT \$ DISEASE—EACH EMPLOYEE \$

OTHER
D Professional Liability (Consultant Contracts Only) F Owner's Protective (construction contracts only)*
E Builders Risk (Construction Contracts Only) *In very limited situations, we will require Owner's Protective.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS

Referenced Project: Contract #1000000
Name of Project - Type of Project

CERTIFICATE HOLDER

New York City Economic Development Corp.
110 William Street, 6th Floor
New York, NY 10038
Attention: Contract Administration

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

SIGNATURE HERE,....

ACORD 25-S (7/90)

©ACORD CORPORATION 1990

APPENDIX F

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

APPENDIX F

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

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

APPENDIX I
OUTSIDE FUNDING SOURCES

APPENDIX I

OUTSIDE FUNDING SOURCE PROVISIONS

1. General Terms.

This Contract will be funded in whole or in part by the Funds identified in Part I, Section 4.1 of this Contract. The receipt of such Funds is conditioned upon the Consultant's compliance with certain mandatory federal, State and City terms and conditions. The Consultant must comply with all applicable mandatory terms and conditions set forth in the Applicable Statutes and Applicable Agreements including, without limitation, those set forth in Part I, Section 4.3, 4.4, this Appendix, Appendix J and in Appendix K. This Appendix shall be annexed to and made a part of any subcontract entered into by the Consultant pursuant to this Contract, and shall be binding on any Subcontractor. To the extent any terms and conditions set forth in this Appendix conflict with any other terms of this Contract, the terms and conditions of this Appendix shall govern. In the event any terms and conditions set forth in this Appendix conflict with the terms and conditions of Appendix J or Appendix K, the more stringent of the conflicting provisions shall govern.

Consultant acknowledges and agrees that the Corporation has the right to delegate the responsibilities of the Director to the City or such agency of the City as may be appropriate.

The Funds have been made available for the Project under the Applicable Statutes and Applicable Agreements including, without limitation, those listed in Part I, Section 4.4 and 4.5, and any other governing statute or agreement related to the Funds, the Project and/or the Contract.

Notwithstanding anything to the contrary in this Contract, the Corporation shall be under no obligation to make such payments except when, and to the extent, such Funds are available. The Corporation shall not be liable to the Consultant in the event any or all of such Funds are not made available.

2. Termination or Suspension Related to Unavailability of Funds.

In addition to any other right to postpone, delay suspend or terminate the Services or the Contract set forth in this Contract, if, pursuant to the Applicable Statutes or Applicable Agreements or otherwise, there shall be a suspension, termination or reduction of the Funds funding this Contract as a result of which Funds are not available for some or all payments under this Contract, the Corporation shall so notify the Consultant and the Consultant shall, and agrees to, cease to perform the activities specified in the notice (permanently or temporarily, as specified in the notice) on the date set forth therein, which may be immediately. The Consultant shall assume no further binding obligations in connection with any Services specified in the notice to be stopped, after the date set forth in the notice, except that such cessation need only be for the period of suspension if the Services are suspended rather than terminated. The award of Funds funding this Contract may be suspended or terminated if the Consultant materially fails to

comply with any term of such award. The award may also be terminated for convenience in accordance with the Applicable Statutes and Applicable Agreements.

APPENDIX J

STANDARD FEDERAL REQUIREMENTS

INTENTIONALLY DELETED

APPENDIX K

STANDARD STATE CLAUSES

New York State Department of State, Division of Coastal Resources
Environmental Protection Fund Grant Document

PROGRAM WORK PLAN

Contractor:	NYC Department of Small Business Services
Contract Number:	C006842
Program Contact Person:	Alejandro Baquero-Cifuentes, NYC Economic Development Corporation
Phone:	(212) 312-3824
Fax:	(212) 312-3915

Sherman Creek Waterfront Master Plan

1. Project Description:

The New York City Economic Development Corporation, sponsored by the NYC Department of Small Business Services, will develop a master plan for revitalization of the Harlem River waterfront between Sherman Creek and West 208th Street, and the adjacent neighborhood. This project builds on the 2003 Sherman Creek Comprehensive Planning Study (CPS) and subsequent EPF-funded implementation activities, and will result in a refined vision, an implementation strategy, and a conceptual design that articulates improved land use, pedestrian and vehicular circulation, visual quality, and linkages with area amenities and open spaces.

The project area has remained physically deteriorated and inaccessible for decades, exemplifying the area's lack of waterfront access and open space recreation opportunities. The New York City Economic Development Corporation (the Contractor) intends to develop a master plan that articulates a shared vision, implementation strategy and a conceptual design for a waterfront esplanade and other access and open space improvements in the project area, building on the waterfront access and recreation component of the CPS and ongoing construction of the Academy Street esplanade and trail and street-end parks at West 202nd- 206th Streets.

2. Project Attribution and Number of Copies

The Contractor must ensure that all materials printed, constructed, and/or produced acknowledge the contributions of the Division of Coastal Resources to the project. The materials must include the following acknowledgment:

"This (document, report, map, etc.) was prepared for the New York State Department of State Division of Coastal Resources with funds provided under Title 11 of the Environmental Protection Fund."

The Contractor must submit to the Division of Coastal Resources all required products, clearly

labeled with the NYS Comptroller's Contract # as indicated on the Face Page of this Agreement and where applicable, the related Task # from this Work Plan. The Contractor shall submit:

- Draft products: two paper copies of each product.
- Final products: two paper copies of each product. In addition, all final products (including reports, designs, maps, drawings, and plans) must be submitted as an electronic copy (in Adobe® Acrobat® Portable Document Format - PDF), created using 300 dpi scanning resolution, and be submitted on a labeled CD-R type CD. The CD must be labeled with the contractor name, contract #, and project title.
- Pictures and photographs must be dated and captioned with the location and a brief description of the activity being documented.

The contributions of the Division of Coastal Resources must also be acknowledged in community press releases issued for the project. Project press releases shall be submitted to the Division for review and approval prior to release to ensure appropriate attribution.

3. Compliance with Procurement Requirements

The municipal attorney, chief legal officer, or financial administrator for the municipality (Contractor) shall certify to the Division of Coastal Resources that applicable public bidding procedures of General Municipal Law §103 were followed for all construction contracts involving more than \$20,000 and more than \$10,000 for purchase contracts. In the case of construction contracts involving not more than \$20,000, purchase contracts involving not more than \$10,000, and contracts for professional services, the municipal attorney, chief legal officer, or financial administrator shall certify that the procedures of the municipality established pursuant to General Municipal Law §104-b were fully complied with.

4. Project Components

Task 1: Initial Project Scoping Meeting

The Contractor, the Division of Coastal Resources (DCR), project partners, and any other appropriate entities shall hold an initial meeting to review the project scope, project requirements, roles and responsibilities of project partners, number of public meetings and techniques for public involvement proposed for the project, and any other information that would assist in project completion. In addition, the composition of a project advisory committee shall be discussed during initial project scoping. The Contractor, or a designated project partner, shall prepare and distribute to DCR and other project partners a brief meeting summary clearly indicating the agreements/understandings reached at the meeting. Work on subsequent tasks shall not proceed prior to DCR approval of the proposed approach as outlined in the meeting summary.

Products: Scoping meeting with appropriate parties, and DCR. Written meeting summary outlining agreements/understandings reached.

Task 2: Project Advisory Committee

The Contractor shall establish a project advisory committee for the Sherman Creek Waterfront project area to oversee all aspects of the project in cooperation with municipal officials and the project consultant(s), if applicable. The committee shall be representative of project stakeholders, including representatives of state and municipal agencies with jurisdiction over project activities or the project area, and non-governmental and community based organizations. A draft list of proposed members shall be circulated to DCR for review and approval prior to establishment of the committee.

Products: Draft and final list of proposed members of project advisory committee.
Project advisory committee established.

Task 3: Request for Proposals

The Contractor shall draft a Request for Proposals (RFP), including a complete project description with site conditions, expected final results, a schedule for completion and criteria for selecting a preferred proposal to conduct preliminary data gathering and review of existing plans and documents and ongoing community. The Contractor shall submit the RFP to DCR for review and approval prior to release for solicitation of proposals.

Products: Approved RFP released through advisement in local papers, the New York State Contract Reporter, and other appropriate means.

Task 4: Consultant Selection and Compliance with Procurement Requirements

In consultation with DCR, the Contractor and an appropriate review committee shall review all proposals received as a result of the RFP. At a minimum, the following criteria are suggested for use in evaluating consultant responses:

- Quality and completeness of the response.
- Understanding of the proposed scope of work.
- Applicability of proposed alternatives or enhancements to information requested.
- Cost-effectiveness of the proposal.
- Qualifications and relevant experience with respect to the tasks to be performed.
- Reputation among previous clients.
- Ability to complete all project tasks within the allotted time and budget.

Incomplete proposals that do not address all of the requested components should not be accepted for review and consideration.

For preparation/certification of final designs and construction documents, and for

supervision of construction, a licensed professional engineer or licensed architect/landscape architect is required.

The municipal attorney, chief legal officer or financial administrator of the municipality shall certify in writing to DCR that applicable provisions of General Municipal Law were fully complied with.

The Contractor's procurement record and consultant selection is subject to approval by DCR.

Products: Consultant(s) selected and approved by DCR. Written certification of procurement procedures.

Task 5: Subcontract Preparation and Execution

The Contractor shall prepare a draft subcontract or subcontracts to conduct analyses and site investigation and planning work with the consultant(s) selected. The subcontract(s) shall contain a detailed work plan with adequate opportunity for review at appropriate stages of project completion, a payment schedule (payments should be tied to receipt of products), and a project cost. The subcontract(s) shall specify the composition of the entire consultant team, including firm name and area of responsibility/expertise, and those professionals from the consultant team or consulting firm that will be directly involved in specific project tasks. The Contractor shall submit the draft subcontract(s) to DCR for review and approval, and shall incorporate DCR's comments in the final subcontract(s). A copy of the final, executed subcontract shall be submitted to DCR.

Products: Draft and final, executed consultant subcontracts.

Task 6: Second Project Scoping Meeting

In consultation with DCR, the Contractor shall hold a second project scoping meeting with the consultant(s), the project advisory committee, and other project partners, as appropriate, to review project requirements, site conditions, and roles and responsibilities; identify new information needs and next steps; and transfer any information to the consultant(s) which would assist in completion of the project. The consultant(s) shall prepare and distribute a brief meeting summary clearly indicating the agreements/understandings reached at the meeting. Work on subsequent tasks shall not proceed prior to DCR approval of the proposed approach as outlined in the meeting summary.

Products: Second scoping meeting with appropriate parties. Written meeting summary outlining agreements/understandings reached.

Task 7: Review Existing Plans and Projects

In an effort to understand the neighborhood waterfront issues, previous planning and project implementation to date, the Contractor or its consultant(s) shall analyze existing documents, including the CPS and the EPF-funded Academy Street Waterfront Esplanade and Sherman Creek Trail project, and other work accomplished to date in and adjacent to the project area. The Contractor or its consultant(s) shall develop a written findings report that will also identify any preliminary issues and opportunities and submit the findings report to DCR for review and approval.

Product: Written findings report.

Task 8: Inventory and Analysis

The Contractor or its consultant(s) shall develop an updated inventory and analysis of existing conditions for the Sherman Creek project area, including narrative, maps and relevant data. This inventory will be used to assist in the identification of issues and opportunities for the waterfront project area. The inventory and analysis of existing conditions shall include, but is not limited to, the following:

- existing and adjacent land and water uses, including but not limited to water-dependent, water-enhanced, residential, commercial, industrial, and vacant properties
- natural features and conditions, including upland and waterside features and conditions
- historic and archeological resources
- views, site relationships and linkages
- infrastructure and utilities (land and waterside), location, extent, condition, capacity
- transportation systems, circulation and types (truck, car, bus, recreational and commercial vessels, pedestrian, bicyclists, etc.)
- parking resources
- planned and anticipated development
- an analysis that identifies and describes needs and opportunities in the project area
- ownership and other legal constraints
- zoning and other applicable designations

The Contractor shall submit the draft inventory and analysis to DCR for review and approval, and shall incorporate DCR's comments into the final inventory and analysis. The approved inventory and analysis shall be incorporated into the master plan and draft and final project reports.

Products: A completed inventory and analysis of uses and conditions.

Task 9: Community Planning Workshop

The Contractor or its consultant(s) and the project advisory committee shall conduct one or more public workshops to solicit community input on refining the vision for the access and recreation component of the CPS for the project area. The community planning workshop(s) will present the original CPS vision and the inventory and analysis of existing conditions, describe preliminary issues and opportunities, and provide an update on implementation activities to date. Workshops will also solicit feedback and input necessary to refine the vision, develop conceptual plans and designs for access improvements, and prepare a prioritized implementation strategy. The Contractor or its consultant(s) shall prepare a summary of each workshop, which will be submitted to the project advisory committee and the DCR, and will also be made available via the internet.

Product: Written summary of activities and findings for each community workshop.

Task 10: Draft Sherman Creek Master Plan

Based on the results of the review of existing plans, inventory and analysis, and community planning workshop(s), the Contractor or its consultant(s) shall prepare a Draft Master Plan that will synthesize and articulate findings, refine the vision for the project area, and generate conceptual designs for the waterfront esplanade and other access and open space improvements that will advance the refined vision. The Draft Master Plan shall provide a development framework and implementation strategy for the identified open space improvements and waterfront esplanade concept that will include, but is not limited to, cost estimates, potential funding sources, prioritization of projects, project phasing, development timeline, and maintenance recommendations. Required permits and approvals shall also be identified. The Draft Master Plan shall be submitted to the project advisory committee and to DCR for review and comment.

Products: Draft Sherman Creek Master Plan.

Task 11: Final Sherman Creek Master Plan

The Contractor or its consultant(s) shall incorporate input provided by the project advisory committee and DCR on the Draft Master Plan into a Final Master Plan. The Final Master Plan shall compile and include all work conducted under previous tasks, and shall present conceptual designs, and prioritize and provide an implementation strategy for proposed open space and waterfront access improvements, including the waterfront esplanade. All comments provided by the project advisory committee and the DCR shall be addressed to the satisfaction of DCR prior to finalization and distribution of the Master Plan.

Products: Final Sherman Creek Master Plan completed as described.

Task 12: Semi-annual Reporting

The Contractor or its consultant(s) shall submit to DCR semi-annual reports (every six months) on the form provided, including a description of the work accomplished, any problems encountered, and any assistance needed. The report may be submitted as part of a payment request.

Products: Semi-annual reports during the life of the contract.

Task 13: Measurable Results

The Contractor or its consultant(s) shall work with DCR project manager to complete the Measurable Results Form. Final payment shall not be authorized until the Measurable Results Form has been completed and filed with project deliverables.

Products: Completed Measurable Results Form.

5. Project Management Responsibilities

The Contractor shall administer the grant, execute a contract with DCR, and ensure the completion of work in accordance with the approved Work Plan. Unless otherwise specified in the Project Description or under Project Components, the Contractor and/or its approved consultant(s) or subcontractor(s) shall conduct all work as described in the component tasks.

The Contractor:

- will be responsible for conducting all project work in conformance with the Work Plan included in the executed contract with DCR.
- will be responsible for all project activities including drafting request for proposals and managing subcontracts with consultants and subconsultants.
- will certify to DCR that the procurement record for project consultants and subcontractors complies with the applicable provisions of General Municipal Law.
- will receive approval from DCR for any and all consultant subcontracts before beginning project work.
- will be responsible for submission of all products and payment requests.
- will be responsible for coordinating participation and soliciting comments from local government personnel, project volunteers, and the public.
- will keep DCR informed of all important meetings for the duration of this contract.
- will receive approval from DCR before purchase of any equipment.
- will secure all necessary permits and perform all required environmental reviews.
- will ensure that all materials printed, constructed, and/or produced reflect the Division of Coastal Resources logo, feature the Secretary of State and the Governor, and acknowledge the contributions of the Division to the project.
- will ensure that all products prepared as a part of this agreement shall include the NYS Comptroller's Contract # as indicated on the Face Page of this Agreement.

- will ensure the project objectives are being achieved.
- will ensure that comments received from DCR and the project advisory committee, or other advisory group, are satisfactorily responded to and reflected in subsequent work.
- will recognize that payments made to consultants or subcontractors covering work carried out or products produced prior to receiving approval from DCR will not be reimbursed unless and until DCR finds the work or products to be acceptable.
- will participate, if requested by DCR, in a training session or sessions focused on developing and implementing revitalization strategies. The purpose of the training session(s) is to build knowledge and provide support to community leaders to advance revitalization efforts and complete priority projects.

The Division of Coastal Resources:

- will review and approve or disapprove of subcontracts between the Contractor and consultant(s) and any other subcontractor(s).
- will participate in initial project scoping and attend meetings that are important to the project.
- will review all draft and final products and provide comments as necessary to meet the objectives.
- must approve any and all design, site plan, and preconstruction documents before construction may begin.

APPENDIX L

CONSULTANT'S M/WBE UTILIZATION PLAN

M/WBE UTILIZATION PLAN FORM

Contractor: _____			Total Percentage of Work to be Subcontracted: _____					
Identify all MBE or WBE Subcontractors to be hired for Subcontracts less than \$1,000,000 [List Firm Name & Address]	MBE or WBE?	Services/Work to be Performed or Materials to be Supplied	Anticipated Time Frame (Start & End Date)	Tax Number/EIN	Phone Number	Fax Number	M/WBE Participation Dollar Value	Percentage of Participation Among All Subcontracts Less than \$1,000,000

Overall Dollar Value of Proposal:	\$
Target Subcontracting Percentage:	%
Total Dollar Value of Target Subcontracting Percentage (<i>Overall Dollar Value of Proposal multiplied by the Target Subcontracting Percentage</i>):	\$
Participation Goal:	%
Total Dollar Value of Participation Goal (<i>Total Dollar Value of Target Subcontracting Percentage multiplied by the Participation Goal</i>):	\$

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

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**EXHIBIT 2
TO
REQUEST FOR PROPOSALS**

**RESPONDENT'S PROPOSAL CERTIFICATION FORM
AND
FEE AND COST SCHEDULES**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**EXHIBIT 2
TO
REQUEST FOR PROPOSALS**

RESPONDENT'S PROPOSAL CERTIFICATION FORM

Proposal Submitted by

[Insert Name of Respondent] (The "Respondent")

Respondent, in accordance with and subject to all of the terms and conditions of the Request for Proposals pursuant to which this proposal (the "Proposal") is being submitted, agrees that it will provide in consideration of the price(s) set forth in the Fee and Cost Schedule, all of the Services set forth in the Scope of Services in accordance with the Contract, and to accept in full compensation therefore (including without limitation all overhead, profit, taxes and other charges and expenses applicable thereto), the price(s) stated in the Fee and Cost Schedule. The Fee and Cost Schedule, is simultaneously being delivered to you in a separate sealed envelope and is incorporated herein and made part hereof.

Respondent makes the following statements and representations as part of its Proposal:

- (a) That the Respondent has examined all parts of the RFP, including the Contract Draft and the Scope of Services, and all terms and conditions hereof.
- (b) That the Respondent agrees to obtain all necessary approvals, permits and/or licenses required by law or regulation of the performance of the Services.

In order to induce NYCEDC to accept this Proposal, Respondent hereby agrees to abide by all of the terms and conditions of the Contract including, without limitation, all representation and warranties set forth therein.

WHEREFORE, the Respondent submits this Proposal to NYCEDC.

[INSERT NAME OF RESPONDENT]

Signed by: _____

Printed Name: _____

Title: _____

Respondent's Address: _____

Notice Address (if different from above): _____

Respondent's Telephone Number: _____

Respondent's Fax Number: _____

Respondent's E-mail Address: _____

Respondent's Tax I.D. Number: _____

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**EXHIBIT 2
TO
REQUEST FOR PROPOSALS**

SAMPLE FEE AND COST SCHEDULE

1. The Respondent shall complete and submit a Fee and Cost Schedule, substantially in the form of the “Sample Fee and Cost Schedule” on the following page.
2. The submitted Fee and Cost Schedule should cover all Services and Tasks described in the RFP and the Contract Draft and shall provide a breakdown of staff costs and Allowable Additional Costs per Task.
3. **PLEASE BE SURE THAT YOU SUBMIT YOUR FEE AND COST SCHEDULE IN A SEPARATE ENVELOPE.**

(See Sample Fee and Cost Schedule spreadsheet on following page)

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
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SAMPLE FEE AND COST SCHEDULE SPREADSHEET

The Respondent shall set forth the names, position and hourly rates and, if applicable, multipliers for the staff Respondent proposes to use to perform the Services. The Respondent shall also itemize its anticipated additional costs directly related to the Services to be performed under the contract. These schedules are for evaluation purposes only and shall not be used to determine payments or to define the Scope of Work. If selected, prior to Contract execution, the Consultant will provide a detailed Fee and Cost Schedule which may be utilized for payment purposes.

A. FEE SCHEDULE

1. Task I	Names	Hourly Rates	Multiplier s
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2. Task II	Names	Hourly Rates	Multiplier s
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3. Task III	Names	Hourly Rates	Multiplier s
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4. Task IV	Names	Hourly Rates	Multiplier s
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5. Task V	Names	Hourly Rates	Multiplier s
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B. COST SCHEDULE

Items	Cost
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**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
SHERMAN CREEK WATERFRONT MASTER PLAN
REQUEST FOR PROPOSALS
FOR THE PROVISION OF PLANNING AND DESIGN SERVICES
NYCEDC CONTRACT NO. 33030001
PROJECT CODE NO. 3303**

**EXHIBIT 3
TO
REQUEST FOR PROPOSALS
M/WBE UTILIZATION PLAN FORM**

M/WBE UTILIZATION PLAN FORM

Contractor:

Total Percentage of Work to be Subcontracted:

Identify all MBE or WBE Subcontractors to be hired for Subcontracts less than \$1,000,000 [List Firm Name & Address]	MBE or WBE?	Services/Work to be Performed or Materials to be Supplied	Anticipated Time Frame (Start & End Date)	Tax Number/EIN	Phone Number	Fax Number	M/WBE Participation Dollar Value	Percentage of Participation Among All Subcontracts Less than \$1,000,000
Overall Dollar Value of Proposal:						\$		
Target Subcontracting Percentage:						%		
Total Dollar Value of Target Subcontracting Percentage (<i>Overall Dollar Value of Proposal multiplied by the Target Subcontracting Percentage</i>):						\$		
Participation Goal:						%		
Total Dollar Value of Participation Goal (<i>Total Dollar Value of Target Subcontracting Percentage multiplied by the Participation Goal</i>):						\$		

Signature:

Date:

Printed Name:

Title:

SAMPLE M/WBE UTILIZATION PLAN FORM

Identify all MBE or WBE Subcontractors to be hired for Subcontracts less than \$1,000,000 [List Firm Name & Address]	MBE or WBE?	Services/Work to be Performed or Materials to be Supplied	Anticipated Time Frame (Start & End Date)	Tax Number/ EIN	Phone Number	Fax Number	M/WBE Participation Dollar Value	Percentage of Participation Among All Subcontracts Less than \$1,000,000
ABC Landscape 111 Street, City, NY 11111	MBE	Landscape	2/08 5/08	11-1111111	(111) 123-234	(123) 1231235	\$ 60,000	2%
XYZ Fence Street, City, NY Zip	WBE	Fencing	3/07 5/07	22-2222222	(222) 567-678	(222) 123-234	\$ 90,000	3%
Best Engineering Street, City, NY Zip	WBE	Survey	1/07 2/07	33-3333333	(333) 123-567	(333) 123-568	\$ 60,000	2%
#1 Construction Street, City, NY Zip	MBE	Demolition	5/07 6/07	44-4444444	(444) 123-234	(444) 123-234	\$ 270,000	9%
Acme Electrical Street, City, NY Zip	WBE	Electrical	10/07 2/08	55-5555555	(555) 123-234	(555) 135-468	\$ 120,000	4%
Overall Dollar Value of Proposal:						\$10,000,000.00		
Target Subcontracting Percentage:						30%		
Total Dollar Value of Target Subcontracting Percentage (<i>Overall Dollar Value of Proposal multiplied by the Target Subcontracting Percentage</i>): [i.e., \$10,000,000 x 30%]						\$3,000,000.00		
Participation Goal:						20%		
Total Dollar Value of Participation Goal (<i>Total Dollar Value of Target Subcontracting Percentage multiplied by the Participation Goal</i>): [i.e., \$3,000,000 x 20%]						\$600,000.00		

Signature: S/XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Date: 0X/XX/0X

Printed Name: Nick Danger

Title: President