

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

REQUEST FOR PROPOSALS

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**PART I
INTRODUCTION**

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**PART I
INTRODUCTION**

1. INVITATION TO SUBMIT PROPOSAL

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:** Phase II, Queens Plaza Streetscape Project

2.2.1.2 **The Project Site:** Queens Plaza South generally between 21st Street and Vernon Boulevard, a portion of Vernon Boulevard near Queens Plaza South, and the multipurpose path between 21st Street and Vernon Boulevard adjacent the north side of the Queensborough Bridge, in the Borough of Queens.

2.2.1.3 **Type of Services:** 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:** Design

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, those consultants listed in Appendix B of Exhibit 1 of this RFP.

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

2.2.2.3.1 At least ten years of experience in providing design services on projects of similar scope and nature.

2.2.2.3.2 Consultant shall have served as a lead consultant overseeing consultants of various disciplines, such as the ones listed in Appendix B of Exhibit 1 of this RFP, on at least five projects in the last five years;

2.2.3 **Contract Information.**

2.2.3.1 **Anticipated Contract Execution Date:** February, 2010

2.2.3.2 **Anticipated Contract Term:** Three years from the Commencement Date.

2.2.4 **Questions Regarding RFP.**

2.2.4.1 **Question/Clarification Deadline:**

(i) **Date:** January 7, 2010

(ii) **Time:** 4:00 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:** January 13, 2010

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:** January 6, 2010

2.2.5.2 **Time:** 10:00 AM

2.2.5.3 **Meeting Place:**

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

2.2.5.4 **Confirmation Email Address:** queensplaza@nycedc.com

2.2.5.5 **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 Design Services for Phase II, Queens Plaza Streetscape Project”

2.2.6.1.2 **One for the Doing Business Data Form Only:** “Doing Business Data Form for Design Services for Phase II, Queens Plaza Streetscape Project”

2.2.6.1.3 **One for Prices Only:** “Price Proposals for Design Services for Phase II, Queens Plaza Streetscape Project”

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 Design Services for Phase II, Queens Plaza Streetscape Project”

2.2.6.2 **Number of Sets of Proposals to be submitted:** Five (5)

2.2.6.3 **Submission Deadline:**

(i) **Date:** January 20, 2010

(ii) **Time:** 4:00 p.m.

2.2.6.4 **Method:** By Hand or Express Mail or other nationally-known overnight courier

2.2.6.5 **Submit to the following Recipient:**

Maryann Catalano
Senior Vice President

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:** queensplaza@nycedc.com

2.2.7 **M/WBE Program Percentages.**

2.2.7.1 **Target Subcontracting Percentage:** 20%

2.2.7.2 **Participation Goal:** 25%

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 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 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 the City's Local Law No. 34, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city", as such terms are defined in LL 34. In order for the City to obtain information necessary to establish the required database, each respondent must complete a Doing Business Data Form in the form available at the Website and described in Exhibit 4 and return it **in a separate envelope** with the respondent's proposal. The submission of a Doing Business Data Form that is not accurate and complete may result in appropriate sanctions. Respondents are encouraged to consult legal counsel with respect to the impact of LL 34. Respondents may also wish to review the document "Q&A: The *Doing Business Data Form* and the *Doing Business Database*" available at the Website and described in for further information. Note that responding to this RFP constitutes "doing business with the city" under LL 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 - attached as Appendix F in Part III of the Contract. 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
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

**PART III
SPECIFIC REQUIREMENTS**

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
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FOR DESIGN SERVICES
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**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 as described in 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 or express mail or other nationally-known overnight courier.** Proposals received via facsimile or e-mail transmittal, or by regular 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.

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PHASE II
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REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

**EXHIBIT 1
TO
REQUEST FOR PROPOSALS**

CONTRACT DRAFT

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA PEDESTRIAN/URBAN STUDY PROGRAM
CONSULTANT CONTRACT
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

CONSULTANT CONTRACT

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA PEDESTRIAN/URBAN STUDY PROGRAM
CONSULTANT CONTRACT
FOR DESIGN SERVICES
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PART I SPECIFIC TERMS AND CONDITIONS

PART II GENERAL TERMS AND CONDITIONS

PART III APPENDICES

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
CONSULTANT CONTRACT
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**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.** 38800001
- 1.3 **Contract Date:** The date of the Contract is as of [_____]
- 1.4 **Commencement Date:** [_____]
- 1.5 **Term:** Three (3) years from commencement date
- 1.6 **Maximum Contract Price:** [_____]
- 1.7 **Project:** Phase II, Queens Plaza Streetscape Project
- 1.8 **Project Site:** Queens Plaza South generally between 21st Street and Vernon Boulevard, a portion of Vernon Boulevard near Queens Plaza South, and the multipurpose path between 21st Street and Vernon Boulevard adjacent the north side of the Queensborough Bridge, in the Borough of Queens.
- 1.9 **Allowable Additional Costs:** The Allowable Additional Costs are defined in Appendix B (Scope of Services) and the amount set forth in Appendix C (Payments).
- 1.10 **Retainage:** NOT APPLICABLE
- 1.11 **Retainage Payment Date:** NOT APPLICABLE
- 1.12 **M/WBE Program Percentages:**
 - 1.12.1 **Target Subcontracting Percentage:** 20%
 - 1.12.2 **Participation Goal:** 25%

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:** David Kane, Senior Vice President, Capital Programs

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: David Kane, Senior Vice President, Capital Programs

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 Appendix J. The Consultant agrees to comply with the provisions of each of such Appendices.

4.1 **Type of Funds:** American Recover and Reinvestment Act of 2009

4.2 **Funding Agencies:** See Appendix J

4.3 **Inspectors:** Any and all government agencies authorized to inspect and audit any aspect of the Services and this Agreement.

4.4 **Applicable Statutes:** See Appendix J

4.5 **Applicable Agreements:** See Appendix J

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: _____

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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 section identified in Appendix G. If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

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

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

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

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

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

8.7 Sales and Use Tax.

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

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

8.8 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 section identified in Appendix M. 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
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
CONSULTANT CONTRACT
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

**PART III
APPENDICES**

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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
Art Commission	Art Commission of the City of New York
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 described in Appendix M and available at www.nycedc.com 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(s)	The reports described in Appendix G and available at www.nycedc.com to be completed and submitted to the Corporation pursuant to Executive Order 50
Event of Default	As described in Part II, Section 3.3.2
Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the Director as described in Part II, Section 1.5.2
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
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.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete 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
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
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
Retainage Payment Date	The date by which any Retainage identified in Part I, Section 1.10 will be paid to the Consultant, as identified in Part I, Section 1.11, subject to the provisions of Part II, Article 2 and Part III, Appendix C
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, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2
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, provided however that Work Product shall not include any Consultant's Underlying Intellectual Property

APPENDIX B

SCOPE OF SERVICES

I. DEFINITIONS

All definitions set forth in the Contract to which this Appendix B is attached shall have the same meaning as in Appendix A or herein unless otherwise defined or the context otherwise requires. The singular shall include the plural and vice versa as the context may dictate.

The following terms shall have the following corresponding meanings.

“Agencies”	Means	Any agencies, bureaus, departments, offices, or other discrete entities of The City of New York, 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.
“Allowable Additional Costs”	Means	Costs of out-of-pocket expenses which may include the cost of 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, 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, meals and those costs considered to be overhead such as normal mailing, local telephone and facsimile charges, in-house copying secretarial, clerical and typist time and the purchase of office or graphic supplies.
“Construction Costs”	Means	The anticipated hard construction costs for the Project, including contingency, unless otherwise indicated.
“Construction Contractor”	Means	Any construction contractor retained by the Consultant to provide construction services in respect of the Project.
“Contract Documents”	Means	A set of plans and specifications based on the approved final design, including necessary approvals and permits.
“Construction Subcontractor”	Means	Any Subcontractor retained by the Construction Contractor or the Corporation to provide construction services in respect of the Project.
“Design Development”	Means	shall mean the task set forth in Section IV - Task IV of this Appendix B.

“Design Development Documents”	Means	shall include contract drawings in sufficient detail to allow the interested parties to visualize the intended Contract Documents, as set forth in detail in Section IV - Task IV of this Appendix B.
“Design Team”	Means	Collectively the Consultant and its Subcontractors.
“Final Design”	Means	shall mean the approved design upon completion of Tasks III and IV, as set forth in Section IV - Task V, of this Appendix B.
“LIC”	Means	Long Island City
“MTA”	Means	Metropolitan Transportation Authority.
“Project Team”	Means	Collectively, the Corporation, NYCDOT, DOT, the Office of the Deputy Mayor for Economic Development, and any other Agency as may be added, from time to time, by the Corporation.
“Schematic Design”	Means	The Schematic Design described in Task III, as set forth in Section IV of this Appendix B.
“Surveys”	Means	Preparation of technical drawings, technical surveys, maps and analyses of the Project Area’s existing conditions to be provided by the Consultant.
“Task”	Means	A portion of the Services to be provided to the Corporation by the Consultant pursuant to this Contract, as described in greater detail in this Appendix B.
"Utility"	Means	Any utility company having legal rights to contain or operate equipment and infrastructure to serve the public within the Project area.

II. INTRODUCTION

A. Project Description/Corporation’s Expectations

1. Project Description

Streetscape improvements along Queens Plaza are currently under construction between 21st Street and Northern Boulevard and are expected to be completed mid-2011 (Phase I). Proposed improvements along Queens Plaza South generally between 21st Street and Vernon Boulevard, a portion of Vernon Boulevard near Queens Plaza South, and the multipurpose path between 21st Street and Vernon Boulevard adjacent the north side of the Queensborough Bridge are envisioned for Phase II. The design services provided under this contract will be for Phase II improvements.

For Phase II, the Consultant shall create a streetscape design for the Project Area that will provide, among other things, improved and widened sidewalks, improved street lighting, and new street trees. The Consultant shall lead a Design Team and provide civil, estimating, permitting, and other design related Services for the Project. The Consultant shall be responsible for all Design Team Services, including but not limited to: overall Project coordination; obtaining a topographic and utility survey; civil and related engineering services; coordination of Contract Documents; permitting from relevant Agencies and Utilities; assistance in cost estimating and value engineering, and assistance in strategic efforts to develop construction phases for the Project.

The Corporation shall procure, through a separate procurement process, an engineering firm that will coordinate with the Design Team during the pre-construction phases for Services, including cost estimating and value engineering Services, as well as constructability and construction documents review at staging and phasing plans (“Resident Engineer”). The Resident Engineer will provide independent oversight and review of the Design Team’s work and will assist the Corporation in Project controls, preparing bid packages and, ultimately, managing Project construction.

The Project Team shall review principal programmatic, design, and construction decisions through regularly scheduled meetings.

2. Corporation’s Expectations

The Corporation expects that Consultant to create a design that provides improved and widened sidewalks, improved street lighting, and new street trees along the south side of Queens Plaza South between Vernon Boulevard and 21st Street and along both sides of Vernon Boulevard from Queens Plaza South to approximately 250-feet north of Queens Plaza South (the southern entrance to Queensbridge Park). The Corporation anticipates that as part of the proposed project some DEP infrastructure may need to be replaced or relocated including, but not limited to fire hydrants, catch basins, manholes, and water mains. The consultant shall prepare a video inspection of sewers within the study area to understand the condition of existing sewers and shall also inventory existing DEP structures (condition, size, and type of catch basins, manholes, etc.) and identify substandard structures which should be replaced. Additionally, other above and below grade utilities may need to be relocated (overhead utility lines exist between Vernon Boulevard and 9th Street) including but not limited to FDNY Call Boxes, National Grid/ConEdison utility lines, NYCDOT street lights, and NYCDOT traffic signals.

Generally, between Vernon Boulevard and 21st Street, Queens Plaza South is a two-way street with two moving lanes in each direction and a parking lane on both sides of the street. The roadway is divided by a landscaped median. The Corporation expects the designed improvements to the Project Area will focus along the south side of the Queens Plaza South. Improvements to the median will be made, as needed, (i.e. repairing only curb in poor condition). The Corporation anticipates that the sidewalk along the south side of the street will be widened approximately 5 to 10 feet (the width will be determined upon completion of Task II.D herein – Traffic Analysis).

The Corporation anticipates that portions of the Project Area may need to be re-graded to maintain positive drainage. Existing signage, traffic signals, utility poles, fire hydrants, catch basins, etc. will need to be relocated as necessary to allow for the sidewalk improvements. Additionally, an existing survey completed in 2004, identifies an existing water main approximately 10-feet from the existing curbline between 9th and 21st Streets. The watermain may need to be relocated to accommodate the proposed 5- to 10-foot sidewalk widening and any proposed street trees.

Vernon Boulevard is a two-way street with one moving lane in each direction and a bike lane on both sides of the street. Improvements along this roadway are anticipated to extend north approximately 250-feet from Queens Plaza South. Improvements along both sides of the roadway will include upgrades to the existing curb, sidewalks, and street lighting. Additional trees will be planted as permitted.

The multipurpose path between Vernon Boulevard and 21st Street adjacent the north side of the Queensborough Bridge is an existing paved path approximately 18-feet wide wherein portions of the path provide street lighting. The improved path would provide an enhanced connection from the bicycle path being constructed as part of Phase I and Queensbridge Park. Improvements along the path may include improved lighting, pavement surface, curb, and fencing.

The Corporation anticipates that coordination and approval may be required by the following agencies, including, but not limited to: NYCDOT Highway Design, NYCDOT Street Lighting, NYCDOT Signals, NYCDOT Office of Construction Management and Coordination, NYCDOT Bicycle Program, MTA, NYCDPR, NYCDGP, NYCDEP and FDNY.

B. Design Teams

1. Existing Design Consultants

The Corporation has contracts with the following design consultants for preliminary design services for the Project. The Consultant may coordinate the design with the existing design consultants to complete the Services.

- a) Urban Design Consultant: WRT/Wallace Roberts and Todd, LLC is the landscape and urban design consultant that has developed the schematic design for both Phases I and II, developed construction documents for Phase I improvements, and continues to consult on all aspects of Phase I improvements.
- b) Civil Engineer: Langan Engineering and Environmental Services, Inc. is the civil engineer consultant of record for Phase I.

2. The Design Team

The Design Team shall consist of, at a minimum, the following:

- Civil Engineer /Lead Project Consultant

- Cost Estimator
- Geotechnical Engineer
- Surveyor

III. GENERAL ADMINISTRATIVE REQUIREMENTS

The Consultant shall perform the following administrative Tasks in connection with and as part of its Services:

- A. The Consultant shall manage the Design Team and coordinate the activities of all the Subcontractors engaged by the Consultant to provide any portion of the Services, as well as with the Resident Engineer.
- B. The Consultant shall provide continuous liaison with the Corporation and shall establish, maintain and coordinate all contacts with DOT, DCP, and DEP, in addition to the other various Agencies, Utilities, community organizations and other interested groups as may be identified by the Project Team. Community outreach and the incorporation of local needs and goals are also critical parts of the Design.
- C. The Consultant shall initiate and function as coordinator for all meetings required in the performance of the Services or as requested by the Corporation and shall provide necessary data and presentation materials for these meetings. The Consultant shall prepare, coordinate approval of and distribute all reports, meeting minutes, correspondence and related materials to the Corporation and any other persons as the Corporation may direct.
- D. The Consultant shall obtain and compile all pertinent specifications, standards and constraints mandated for the Project or the Services by any Agency. All plans and specifications prepared as part of the Services shall conform to the standards and specifications of any interested Agencies.
- E. If applicable, the Consultant shall prepare and provide all relevant drawings and materials in order to obtain the revocable consent or franchises from DOT as required for any and all proposed amenities.
- F. The Consultant shall submit monthly Progress Reports to the Corporation. In the date which is one month after the Commencement Date, and every month thereafter (each such month-long period being a "Reporting Period"), the Consultant shall analyze the Project's progress as it relates to the approved work plan and shall file with the owner a Progress Report based on this analysis. The Progress Report and documentation shall be submitted to the Corporation for approval no later than two (2) working days following the close of the Reporting Period.
- G. The Consultant shall revise and correct, without additional compensation therefore, any and all profiles, reports and documents including any Surveys and project designs until same shall receive final approval by the Corporation and by all other Agencies whose approval is required. The Consultant shall initiate all actions for incremental review of

proposed designs, including all follow-up meetings, as required, to expeditiously resolve all questions and concerns and to obtain required approvals. The Consultant shall not make any changes in the Scope of Services as outlined herein without prior written authorization from the Corporation.

- H. The Consultant shall prepare and make all submissions to the Corporation and, as directed by the Corporation, to DOT and any other Agency, community group or other interested group. The number of copies of each submission shall be as required by the Corporation.
- I. The Consultant shall prepare, submit, assemble and reproduce any and all design documents and other Work Products as required by the Corporation.
- J. The Consultant shall follow the additional requirements for street/sidewalk reconstruction set forth in Attachment 1 of this Appendix B hereof,.
- K. The Consultant shall perform the following Tasks:

- Task I Preparation, Review & Coordination
- Task II Surveys/Analysis
 - A. Topographic Survey
 - B. Utility/Survey
 - C. Test Pit Programs (As required)
 - D. Traffic Analysis
- Task III Schematic Design
- Task IV Design Development
- Task V Final Design/Contract Documents
- Task VI Construction Bidding and Analysis
- Task VII Construction Support

The Design Team shall provide cost estimating services, independent of cost estimates developed by the Resident Engineer, as may be directed by the Corporation. During all stages of the Services, the Design Team shall assist the Corporation and be responsible for obtaining public approvals and permits as may be required by applicable Agencies. All Services shall comply with Agency codes and regulations to the extent feasible and the Consultant shall immediately alert the Corporation as to any problems thereof. The Design Team shall attend Project meetings as necessary during all stages of the Project and assist the Corporation as required if the Corporation seeks reconsideration from approving Agencies.

The Design Team shall coordinate its Services and attend meetings with appropriate Agencies for the review of proposed Contract Documents, and shall incorporate Agency comments into the aforementioned documents.

IV. SPECIFIC REQUIREMENTS

The Consultant shall comply with the following requirements in respect of each Task:

Task I Preparation, Review and Coordination

- A. Under this task, the Consultant shall, to the extent not previously provided, assemble and review all record data for the Project; conduct formal interviews with all Agencies and other interested governmental and non-governmental personnel, as directed by the Corporation, in order to ascertain all existing concerns, issues, problems and programs directly related to the Project Area; fully coordinate all activities under this Project with the various Utilities, and any additional Agencies or organized groups which, in the opinion of the Corporation, are necessary for the development of a fully coordinated Project. This shall include, but not be limited to, the following:
1. The Consultant shall inspect the Project Area and become familiar with the general and specific nature of the Project and the Project Area. The Consultant shall identify and inventory sub-standard and features. During this inspection, the Consultant shall make a complete photographic record of the Project Area in order to illustrate the general nature/character, as well as to illustrate the typical and special conditions. The photographs shall be either color or black and white, shall be presented in a three-inches by five-inches (3" X 5") format, and shall be bound and annotated to provide a permanent record of the existing conditions.
 2. The Consultant shall assemble and review all available reports, designs, surveys, maps, plans, documents, maintenance records, traffic counts, alignment maps, such as, construction photographs and accident records relative to the Project from, but not limited to, DOT, DEP, DCP, the Queens Borough President's Office, the New York City Police Department, and from any other Agencies or organized groups as the Corporation may direct, or as may be otherwise required for the purpose of fully coordinating the Project. Where required, the Consultant shall conduct interviews with personnel of the above Agencies or other stakeholders.
 3. The Consultant shall interview DOT personnel, as appropriate, to determine the extent and location of any conditions in the Project Area and immediate vicinity, which may affect the Project and to identify any proposed improvement programs within the Project Area or immediate vicinity. The Consultant shall obtain, and become familiar with, all applicable DOT design directives, and any other standard details, administrative procedural bulletins and guidelines from any Agencies having jurisdiction over the Project.
 4. The Consultant shall interview DEP personnel to determine the extent and location of any drainage, sewer and water supply conditions, which may affect the Project, and to identify any proposed improvement programs within the Project Area and the immediate vicinity. The consultant shall also prepare a video inspection of sewers within the study area to understand the condition of existing sewers and shall also inventory existing DEP structures (condition, size, and type of catch basins, manholes, etc.) and identify substandard structures which should be replaced.

5. The Consultant shall analyze the expressed needs and concerns of the parties contacted, and shall address those needs/concerns, which, in the opinion of the Consultant and the Corporation, are pertinent to the Project. The Consultant shall develop and pursue a recommended course of action and/or strategy to resolve those issues, which are pertinent to the Project, and to achieve the Project goals.
6. The Consultant shall fully coordinate the identification of all current and future planning, design and construction projects by the City such as water main projects, street lighting projects, fire and police communication projects; as well as projects of a significant nature by parties other than the City (private utilities, authorities, governmental and non-governmental agencies and abutting property owners) and shall recommend programming alternatives and staging, as required.
7. The Consultant shall meet with the Corporation to develop Project goals and to develop programmatic requirements for the Project.
8. The Consultant shall coordinate the proposed program with DOT, DEP, all Utilities, and all other parties as may be as required for the efficient completion of the Project, and shall identify and resolve all requirements, conditions and issues as presented by said parties.

Task II Surveys/Analysis

The following tasks shall be performed by the Consultant, as required, prior to the commencement of Task III. This task is designed to assist the Consultant in defining the parameters of the Final Design.

A. Topographic Survey

Under this portion of Task II, the Consultant shall prepare topographic surveys of the Project Area. The topographic surveys shall be prepared within the framework of the following parameters:

1. The Consultant shall submit for approval the names and experience portfolios of all persons and Subcontractors proposed for use in connection with the topographic survey prior to start of work.
2. The topographic surveys shall be referenced by station and offset to a centerline baseline, which has been established/coordinated/tied into existing borough monument lines, in accordance with current DOT standards. All elevations shall be references to established borough benchmarks, or to benchmarks set from said established borough benchmarks through the use of independent bench runs. The reference points, including bench runs and all tie-ins to the centerline baseline,

shall be clearly documented so that they may be re-established at any time during the course of the work by the Consultant, or in the future by any other surveyor.

3. The topographic surveys shall locate all physical features within the Project Area needed to produce a comprehensive design, including, but not limited to, the following information:
 - a. Established building line lengths, including interior angles.
 - b. Established legal grades of all streets.
 - c. Legal widths of all pavements, sidewalks and sidewalk areas.
 - d. Actual widths of all pavements, sidewalks and sidewalk areas.
 - e. Identification of all streets, including "paper" streets, by name.
 - f. Identification of all plazas, malls and public areas.
 - g. Location, by station and offset, of all roadways, edges of pavements, headers, curbs, drop curbs, pedestrian ramps, sidewalks, driveways, distinctive/special sidewalk areas, bus stops, traffic islands and traffic channels (permanent and temporary), trees (including caliper and edge distance to existing curb) and survey monuments. Existing curbs, sidewalks and pavements shall be identified by condition and type of materials.
 - h. Location, by station and offset, and identification of all street hardware including, but not limited to, manhole cover castings, valve box cover castings, catch basins, utility chamber covers, and gratings.
 - I. Location, by station and offset, and identification of all sidewalk hardware including, but not limited to, coal chutes, oil fills, cellar doors, under-sidewalk drains, sidewalk elevators, building sidewalk ventilation gratings, subway ventilation gratings, hydrants (high pressure, low pressure), street lights, traffic signal poles, parking signs, parking meters, traffic control boxes, traffic controllers, traffic detectors, fire call boxes, police call boxes, subway entrances and emergency exits, traffic stanchions, structural columns, monuments, newsstand kiosks, sidewalk retail areas, areaways, decorative fences and railings, steps, walls, stoops, planting areas, and cellar windows at grade.
 - j. Location, by station and offset, of all street encroachments including, but not limited to, hedges, fences, grass areas, retaining walls, steps and stoops.

- k. Location and identification of all abutting tax lots by lot and block numbers as well as existing frontage lengths.
 - l. Location, by station and offset, of all fronts of abutting buildings, including identification by house numbers, story height, entranceways, building type and use.
 - m. Direction of traffic, and the location and type of all lane and crosswalk markings, including school crossing markings.
- 4. Horizontal locations shall be taken to the nearest tenth (1/10) of a foot.
 - 5. Vertical locations (elevations) shall be taken to the nearest hundredth (1/100) of a foot (or as specified by the Corporation) longitudinally at fifty (50) foot stations, as measured along the centerline baseline, and at all street intersections, breaks in grade, building lines at intersections, and other locations required to fully define the existing topography; transversely, elevations shall be taken at the building lines, top and bottom of curbs, centerline of street and front and back edges or ribbon sidewalk.
 - 6. Spot elevations shall be taken at all street surface hardware locations, steps/ platforms, building entrances, first floors, garage floors, back of sidewalk at all entranceways, ground elevations at building entrances, traffic islands, parking aprons, intersections (as required), corner (with crosswalk) sidewalk quadrants, storm/combined sewer inverts, at points giving the clearance from the roadway to the underside of overhead structures, and as otherwise required for design purposes.
 - 7. All City-owned street hardware, including manhole covers and frames, inlets, catch basins, gratings, frames, curb pieces, traffic signs, streetlights, meters and benches, shall be located by station and offset. The condition of each shall be noted.
 - 8. All trees located within the Project Area shall be located by station and offset. The size in caliper inches and condition of each shall be noted, and the results presented in a tabular format to be included as a section of the technical supplement.
 - 9. All cellar doors located within the Project Area shall be located by station and offset. Each shall be visually inspected. The condition of each shall be noted.
 - 10. The topographic surveys as herein stipulated shall include the full right-of-way in Queens. The topographic surveys shall extend beyond all intersections a distance of fifty feet (50') measured along the centerline of the respective street from the building line projection.

11. Datum plane and coordinate system shall be that in use by the Office of the Queens Borough President.
12. All measurements shall be in the United States Standard of Measurements except as follows: legal mapped dimensions, base line dimensions and stationing shall be shown in United States Standard of Measurements, with metric equivalents shown in parentheses.
13. All field notes shall be permanently bound, sharp, clear, crisp, cleaned and "fixed", dated, signed and sealed, and in a format approved by the Corporation.
14. The Consultant shall submit to the Corporation original survey notes, summary of survey procedures/instruments employed, survey control data, discussion of survey accuracy, summary or survey control data, survey tie ins, computer digitizer tapes and survey computations, which shall become the property of the Corporation.
15. The Consultant shall identify and provide the Corporation with copies of all survey source material.
16. The topographic surveys shall be plotted within the framework of the following parameters:
 - a. All plotting and drafting work shall conform to currently applicable DOT department standards. In general this shall include drawing in ink on an approved 24" X 36" reproducible drafting film, to a scale of 1" = 20', unless otherwise specified by the Corporation.
 - b. All topographic drawings shall utilize standard DOT format(s), notes and symbols.
 - c. All printing and line work shall conform to current DOT standards for the microfilming and drafting of drawings.
 - d. The format for plotting the topographic surveys shall be not more than two plan views per sheet, depending upon width of right way, and whether street is straight, skewed or curvilinear.
 - e. The topographic surveys shall be plotted in the following manner: from the original notes, the Consultant shall prepare a "clean" base map, which shall be a pictorial representation of the Project suitable for final design, indicating such elements, including, but not limited to, building lines, lot lines and street/sidewalk hardware as may be appropriate in light of the Project, and omitting such elements as elevations, lane lines, and other redundant/extraneous information; upon completion of the "clean" base

map, the Consultant shall photographically reproduce the base map and complete the plot of all existing topographic information.

- f. The topographic plans shall contain, but not be limited to, the following information: building lines, including lengths and interior angles; key existing elevations; street names; baseline sketch/layout; north arrow; existing curb lines and/or edges of pavement; street/sidewalk hardware; and catch basins.
17. Working profiles, conforming to applicable DOT standards, shall be plotted within the framework of the following parameters:
- a. The plotting of working profiles shall conform to currently applicable DOT standards. In general this shall include drawings in pencil, on approved standard cut size sheets (24" X 36") to a scale of 1" = 30' horizontal and 1" = 2' vertical, unless otherwise specified by the Corporation.
 - b. Match lines and horizontal scales shall coincide with those utilized for the plotted topographic surveys. In addition, profiles shall be extended beyond match lines in either direction, as required, to include the adjacent intersection.
 - c. All printing and line work shall conform to current DOT standards for the microfilming and drafting of drawings.
 - d. Legends and labels shall be so spaced along the length of the working profile to ensure its clarity.
 - e. Two sets of profiles will be required: one for the northerly and southerly side of the Project and one for the easterly and westerly side of the Project. These profile sets shall contain the following numerical elevation values plotted and drafted: building lines, including first floor elevations of all dwellings, buildings, doorways, garages, loading bays; front and back edges of ribbon walk; tops of curb; centerline of roadway, including elevations of all manholes; and legal curb lines and/or center line grades, and overhead structures.
 - f. Numerical values for elevations of the respective profile shall be plotted longitudinally at fifty (50) foot stations, as measured along the centerline baseline, and at all street intersections, breaks in grade, and other locations required to fully define the existing topography.
 - g. All profiles shall be clearly labeled and stationed, with numerical axis values shown.

- h. Datum planes shall be selected for ease of use and for accommodation of the profiles within the spaces provided.
- 18. Cross sections conforming to applicable DOT standards shall be plotted within the framework of the following parameters:
 - a. Cross sections shall be plotted in pencil, on approved standard cut size sheets (24" X 36") to a scale of 1" = 10' horizontal and 1" = 1' vertical, unless otherwise specified by the Corporation.
 - b. All printing and line work shall conform to current DOT standards for the drafting of drawings.
 - c. All cross sections shall be clearly labeled and stationed.
 - d. Cross sections shall be plotted at fifty foot (50') stations as measured along the centerline baseline, and at all intersections and breaks in grade. The cross sections shall include the elevations at the building line, curbs, centerline of roadway, and all other essential locations, including, but not limited to, ramps, drive ways, building entrances, malls and traffic islands.
 - e. Cross sections shall indicate existing legal grade and shall be plotted to show elevations at the property line, curb line, opposite curb line and opposite property line for each intersection.
- 19. All original topographic information shall be dated, signed and certified to by a licensed surveyor. The license seal of the surveyor and/or registered professional engineer shall be shown on all plans, tracing and tabulation sheets.

B. Utility Surveys

Under this portion of Task II, the Consultant shall be required to perform and plot utility surveys for the Project. The utility surveys shall be prepared within the framework of the following parameters:

- 1. The utility surveys shall locate all existing surface and subsurface utilities, facilities and systems (both public and private) within the Project Area needed to produce a comprehensive final design, including the identification and location of:
 - a. Storm, sanitary, combined and interceptor sewers showing size, elevation and material.
 - b. Water mains, gas mains and steam mains showing material and size.
 - c. Electric and telephone conduits.

- d. Fire and police communications conduits.
 - e. Subway tunnels, station areas, access stairs and ventilator structures.
 - f. Utility chambers and vaults.
 - g. Basin and inlet connections.
 - h. Vehicular, pedestrian and utility tunnels.
 - i. Utility poles and overhead electric facilities.
 - j. Other surface and subsurface facilities and appurtenances, as required.
- 2. The Consultant shall review all data obtained from the Agencies, Utilities, governmental authorities and others, and shall coordinate/reconcile such data with the topographic surveys.
 - 3. The Consultant shall reconcile all discrepancies in the location and identification of all subsurface elements between the topographic surveys and the utility records.
 - 4. The limits of the utility survey shall be the same as those for the described above.
 - 5. All field notes shall be permanently bound, sharp, clear, crisp, clean and "fixed", dated, signed and sealed, and in a format as approved by the Corporation.
 - 6. The Consultant shall submit to the Corporation original survey notes, together with all public and private utility drawings, plans and plates, which shall become the property of the Corporation.
 - 7. The Consultant shall plot the utility survey within the framework of the following parameters:
 - a. The utility survey will be plotted on base maps, which have been photographically reproduced from the "clean" topographic base maps. All utilities shall be clearly delineated and identified.
 - b. All plotting and drafting work shall conform to currently applicable DOT standards. In general this shall include drawing in ink on an approved 24" X 36" reproducible drafting film, to a scale of 1" = 10', unless otherwise specified by the Corporation.
 - c. All utility drawings shall utilize standard DOT format(s), notes and symbols.

- d. All printing and line work shall conform to current DOT standard for the drafting drawings.
- e. The format for plotting the utility surveys shall be not more than two plan views per sheet, depending upon width or right way, and whether street is straight, skewed or curvilinear. There shall be no overlapping of street plotting for the utility surveys.
- f. The utility surveys shall be plotted with utilities indicated by double lines with "to scale" width.

C. Test Pit Program

The following task shall only be performed to the extent required by the Final Design.

- 1. The Consultant shall prepare bid documents including test pit information; solicit, review and analyze bids for the provision of test pit services; administer, coordinate and supervise the work of a test pit Subcontractor; provide test pit results for review and evaluation by the Corporation; prepare such technical reports and drawings as may be required by the Corporation; and integrate the results into the design work.
- 2. Based upon proposed location of special amenities, such as free-standing pedestrian elements, information signs, kiosks, etc. the test pit program shall identify locations of existing sub-surface utilities that would interfere with proposed foundations.
- 3. The Consultant shall prepare a test pit plan, for the purposes of obtaining competitive bids for the test pit work, indicating the required number and type of test pits. The test pit plan shall be coordinated with the various Utilities, and shall be presented to the Corporation for review and approval. Following review by the Corporation, the test pit plan shall be revised appropriately.
- 4. The Consultant, complying with all applicable City, State and Federal regulations, shall make all necessary arrangements to retain a qualified Subcontractor to obtain the required test pits:
 - a. Prepare contract documents for test pit services and submit to the Corporation for review.
 - b. Print a minimum of six (6) copies of the contract documents for distribution to prospective bidders, and one (1) additional copy for use by the Corporation.

- c. Obtain bids from a minimum of three (3) bidders unless otherwise approved by the Corporation. Consultant must identify qualified prospective bidders, prepare and send invitations to bid. If the minimum three (3) bids are not received, the Consultant shall show evidence, in the form of letters from prospective bidders declining to bid or registered mail receipts for unanswered invitations to bid, that the minimum three (3) bidders have been solicited.
 - d. Review and analyze bid submittals for responsiveness to the invitation to bid (i.e. bidder has the requisite skills and experience to conduct work of this nature), adequacy of the equipment, technique and manning proposed.
 - e. Award contract, upon approval of the Corporation, to the lowest responsible bidder. The amount of such contract will be considered an Allowable Additional Cost.
 - f. Coordinate as necessary with the Corporation and with all Agencies.
- 5. The Consultant shall administer, coordinate and continuously supervise the work of the Subcontractor. The Consultant shall assign a qualified inspector who shall be present at the work site at all times while test pits are being taken. A photographic record shall be made of each test pit.
 - 6. The Consultant, complying with all applicable City, state and federal regulations, shall engage the services of a qualified soil laboratory to classify information if necessary.
 - 7. The Consultant shall prepare a report incorporating the results and conclusions from the subsurface exploration as they affect the design.
 - 8. The Consultant shall use the results of the test pit program to perform the design of all applicable phases of the work.

D. Traffic Analysis

The Consultant shall conduct a traffic study and complete a Traffic Report in connection with street design and reconstruction within the Project Area. This analysis shall incorporate all traffic movement and parking lanes within the Project Area. The Consultant shall coordinate with DOT guidelines in their preparation of the Traffic Report. Work shall include, but not be limited to:

- 1. The Consultant shall coordinate with the DOT's Bureau of Traffic Operations and the Corporation to determine the extent and availability of existing traffic counts and turning counts within the streets and intersections incorporated within the Project Area.
- 2. The Consultant shall determine the location of each traffic count, and/or manual turning movement count program to obtain the required data specific to the

requirements of the Project Area. This program shall be presented to the Corporation and DOT for review and approval. The Consultant shall be required to perform manual turning movement counts and vehicle classification counts at a maximum of five intersections at up to three, two-hour, peak periods.

3. The Consultant shall perform the required twenty-four hour (24 hour), or otherwise approved duration, mechanical counts, the purpose of which are to determine overall traffic volumes within the Project Area.
4. The Consultant shall prepare an existing on-street parking inventory and on-street parking utilization analysis.
5. The Consultant shall integrate/evaluate the results obtained from the mechanical traffic counts and manual turning movement counts with the data obtained from DOT's Bureau of Traffic, where applicable, as well as from other sources.
6. The Consultant shall utilize the traffic data to determine projected traffic volumes for the appropriate design/horizon year. When estimating design year traffic volumes, the Consultant shall include traffic generated by any known background projects within the study area which will be completed prior to the project's design year.
7. The Consultant shall obtain from DOT, NYPD, and NYSDOT historic crash data and crash reports for intersections and segments of the Project Area. The Consultant shall analyze the data and reports to highlight any existing safety concerns for consideration in the ultimate design and operation recommendations. Contributing factors to pedestrian injuries will be the focus of the analysis and recommendations.
8. The Consultant shall use the information obtained and compiled in the course of the traffic study to inform the Corporation of appropriate alignment, signalization, regulation, and other features to be included in the design recommendations and alternatives for the design.
9. The Consultant shall prepare as requested any traffic control warrant studies in accordance with DOT standards using data collected as part of this task.
10. From the survey results the Consultant shall provide a minimum of three alternative street redesigns and incorporate within the designs the installation, relocation and/or rehabilitation of all traffic signs, signals, street lights, arrows, markers, lane delineation, pedestrian crossing, channelization, parking meters, etc., which shall be developed in consultation with DOT. The proposed street redesigns shall provide lanes accommodating all necessary traffic flows, in addition to sufficient space for parking and a widened sidewalk along the south side of Queens Plaza South.
11. The Consultant shall prepare an order-of-magnitude cost estimates for implementing each alternative street redesign.

12. The Consultant shall present a matrix for each alternative including, but not limited to: Level of Service ("LOS"); construction costs; safety; and clarity of design.
13. The Consultant shall review the alternative street redesigns with the Corporation, DOT, and others as necessary to determine their consistency with City traffic plans and constraints and their feasibility. Based on these reviews the Consultant shall include one street redesign alternative within their Traffic Report and design for the Project.
14. The Consultant shall prepare a narrative report which will be submitted to the Corporation. Upon approval by the Corporation, the Consultant shall submit the report to DOT for their review and approval. The report shall include, but not be limited to, such information as: traffic volumes, accident analysis, heavy vehicle percentages, manual turning movement counts, mechanical counts, traffic parameters, methodology used, design assumptions, and street classifications. Recommendations for bus stop locations and potential bus route adjustments will be part of the report. The Consultant shall describe how the proposed redesign and other recommendations will affect traffic operations and Level of Service (LOS).

Task III Schematic Design

Under this task, the Consultant shall synthesize the relevant data assembled under Tasks I and II into a functional schematic design and preliminary recommendations for the proposed Project ("Schematic Design"). This shall include, but not be limited to the following:

- A. The Consultant shall submit for approval the names and experience portfolios of all persons and/or specialists if necessary, proposed for use in connection with the Schematic Design prior to the start of work.
- B. The Consultant shall review the Surveys, any relevant maintenance records and all reports or other data otherwise prepared in connection with the Project.
- C. The Consultant shall develop a minimum of three (3) schematic designs and preliminary recommendations for design elements intended to improve the environment on Queens Plaza South, Vernon Boulevard and the multipurpose path. The Consultant shall work closely with the Corporation to develop the schematic designs. The Consultant shall provide order of magnitude schematic cost estimates for the alternatives.
- D. In preparing any schematic design and preliminary recommendations, the Consultant shall consider concerns regarding elements such as appropriateness to the particular location, durability, and the potential for vandalism and maintenance responsibility. The Consultant shall coordinate and discuss these concerns as necessary, with the Corporation and the appropriate Agencies.
- E. The Consultant shall present the proposed treatments in a schematic plan view, 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 to demonstrate the interrelationship of the distinctive design elements and the overall effect of the proposed improvements to the pedestrian environment. The format, size and scale for the plans and cross-sectional views shall be as approved by the Corporation. Preliminary recommendations shall be coordinated with the schematic design and shall explain all significant aspects of the proposed treatment.

- F. The Consultant shall submit to the Corporation for review three (3) copies of the proposed schematic design and any preliminary recommendations. Upon approval, the Consultant shall submit, as directed by the Corporation, the recommended schematic design to the various concerned parties, including Agencies and Utilities.
- G. The Consultant shall evaluate all comments received and shall adjust the schematic design to conform to these comments which, in the opinion of the Consultant and/or the Corporation, are pertinent to the Project.
- H. The Consultant shall then submit the modified schematic design to the Corporation and all concerned parties, including the Public Design Commission if necessary, for review and comment. The Consultant shall obtain written sign-offs (i.e., approvals) from all required Agencies. Upon receipt of approvals, if required by the Corporation, the Consultant shall present the final schematic design to the Corporation.
- I. The Consultant shall determine which project elements, if any, will require revocable consent or franchises from DOT. The Consultant shall prepare all required documentation and initiate and attend all meetings as required in order to obtain the revocable consent or franchise approval.
- J. The Consultant shall obtain written approval of the Schematic Design task from the Corporation before proceeding with the next task.

Task IV Design Development

Under this task, the Consultant shall synthesize the relevant data assembled under Tasks I, II and III into a functional design for the proposed Project. This shall include, but not be limited to the following:

- A. In general, the Design Development Documents shall include contract drawings in sufficient detail to allow the interested parties to visualize the intended Contract Documents. The Consultant shall develop Design Development Documents by superimposing the intended design on "clean" base maps, unless otherwise specified by the Corporation.
- B. The contents of the topographic and utility survey shall be incorporated into the Design Development Documents. The Consultant shall utilize as much information from these

documents as may be necessary to check design assumptions and potential interference problems relating to substructures and abutting properties.

- C. All plotting and drafting work required under this Contract shall conform to currently applicable DOT Builders Pavement Section standards.
- D. The Design Development Documents shall comply with the following provisions:
 - 1. All drawings shall show the locations of all existing physical features, both surface and subsurface, which affect the work;
 - 2. All drawings shall show the horizontal locations and vertical locations of all proposed work under the Project, with horizontal locations established by station and offset, and both horizontal and vertical locations shall be within the limits of accuracy established in the plotted topographic survey and shall be tied into the Project baseline;
 - 3. All drawings shall show all essential information, which shall include, but not be limited to, such information as existing elevations, proposed design elevations, block and lot numbers, street address, sections, details, notes and sketches, and any other work necessary to fully describe and define the intended design, in accordance with currently applicable DOT standards.
- E. The Consultant shall coordinate with other Agencies' projects under design or construction and shall coordinate this work with the Project.
- F. The Consultant shall incorporate the Design Development drawings for all elements of work described in the specific requirements into the Design Development drawings.
- G. The Consultant shall prepare preliminary specifications for the work.
- H. The Consultant shall prepare estimates of cost for construction of the Project based on current labor costs, a breakdown for special items, and current unit prices for standard items. Separate cost estimates shall be prepared as directed by the Corporation.
- I. The Consultant shall maintain current information relating to the estimated cost of the Project during the design period and shall inform the Corporation promptly in writing of any significant changes in such estimated cost due to market conditions or changes in the scope or design of the Project.
- J. The cost estimate shall be consistent with the Project budget as specified from time to time by the Corporation. If the preliminary estimate exceeds the budget, the Consultant shall in consultation with and at no additional cost to the Corporation, modify the Design Development Documents as necessary until the preliminary estimate is acceptable to the Corporation.

- K. The Consultant shall prepare a refined cost estimate for the maintenance of the special amenities that have been incorporated into the Design Development Documents.
- L. The Consultant shall review the Design Development Documents with the Corporation as they are being developed.
- M. Upon completion of the Design Development Documents, or as otherwise deemed appropriate by the Corporation, the Consultant shall submit prints to the Corporation and to all other interested Agencies, Utilities, and other parties which, in the opinion of the Corporation, may have an interest in the Project or the Project Area.
- N. The Consultant shall review and evaluate the comments received from all parties reviewing the preliminary contract drawings. Where comments pertain to design being performed under the jurisdiction of other Agencies, the Consultant shall make all appropriate requested changes to the design or incorporate additional appurtenant work, and/or incorporate completed designs prepared and furnished by the various interested parties, into the Design Development Documents. Where the requested changes are deemed by the Consultant and the Corporation to be incompatible with the Final Design, the Consultant shall meet with the affected Agencies to discuss and develop alternate solutions until one solution is acceptable to all parties involved.
- O. Concurrently and in conjunction with the initial review of the Design Development Documents package, the Consultant shall contact the DOT to develop a maintenance and protection of traffic scheme, where necessary. The Consultant will be required to present copies of the Design Development Documents, together with the coordinated pre-final maintenance traffic alternatives, to DOT. Upon development and approval of the fully developed maintenance traffic scheme, all necessary drawings, sketches, notes, charts, legends, symbols, and related materials shall be incorporated into the Design Development Documents.
- P. The Consultant shall modify and correct, as appropriate, the Design Development Documents in accordance with the comments received from the interested reviewing parties. The affected portions of the contract drawings shall be resubmitted, as necessary, to the interested parties for review and approval.
- Q. The Consultant shall obtain written approval of the Design Development Task from the Corporation before proceeding with the next task.

Task V Final Design / Contract Documents

Under this task, the Consultant shall synthesize the relevant data assembled under Tasks I, II, III and IV into Contract Documents. This shall include, but not be limited to the following:

- A. After the Consultant has acquired the required written approvals from appropriate Agencies and Utilities, the Consultant shall prepare all required Contract Documents in a manner and form that enables the Corporation to award the necessary contract for

construction. The Contract Documents shall include final drawings and specifications. The final drawings and specifications shall include, but shall not be limited to, drawings and specifications for all elements for the Project including any necessary equipment.

- B. The Consultant shall participate in a construction review of the Project that shall be carried out by the Corporation.
- C. The Consultant shall consolidate into one fully developed and fully coordinated contract package all the information necessary to build the Project along with the material developed for the Agencies.
- D. The Consultant shall subsequently prepare a final cost estimate for the Final Design, which shall be prepared in a format approved by the Corporation. In preparing the cost estimate, the Consultant shall use the latest unit prices for all standard items.
- E. Upon completion of the Contract Documents and final estimates of cost, the Consultant shall submit one copy of the Contract Documents and final estimates to the Corporation for review and comment.
- F. Final plans shall be at a scale approved by the Corporation and proposal for bids shall be on 8 1/2" X 11" sheets.
- G. Following the Corporation's review of the Contract Documents, the Consultant shall make all modifications required by the Corporation and shall submit the Contract Documents for approval in writing to those Agencies with jurisdiction over the Project, including the Public Design Commission if necessary. The Consultant shall also submit the Contract Documents to any Utility with facilities affected by the Project.
- H. Upon approval in writing of the Contract Documents by Agencies or utilities with jurisdiction over any aspect of the Project, including the incorporation of all modifications as may be required in conjunction with those approvals; the Consultant shall submit the following items to the Corporation for signature:
 - 1. The original of the title sheet, signed by the Consultant, prepared in a format approved by the Corporation;
 - 2. A set of paper prints of the contract drawings;
 - 3. A copy of the engineer's final estimate; and
 - 4. A set of specifications, including addenda and bid sheets.
- I. The Consultant shall prepare and submit to the Corporation copies, as needed, of the Contract Documents reproduced in a clear, legible form acceptable to the Corporation.

- J. The Consultant shall prepare a maintenance manual for any special amenities that are designed, which will include specifications for materials; installation specifications; resources; and annual maintenance schedules.
- K. The Consultant shall prepare, submit, assemble and reproduce the documents required for construction of the Project to the extent provided below. The Contract Documents include: (1) the plan and drawings; (2) the proposal for bids; (3) the specifications; (4) all addenda issued prior to the receipt of bids; (5) the form of construction contract; (6) all provisions required by law to be included in the construction contract; (7) forms for the notice of award, the bid, performance and payment bonds; (8) the general provisions conditions; and (9) all other supplementary or special provisions or conditions. Items (1), (3) and (4) shall be prepared in the first instance by the Consultant. Items (2), (5), (6), (7), (8), and (9) shall be prepared in the first instance by the Corporation. If requested, the Consultant shall review and make recommendations for any special conditions to be included in the Contract Documents.

Task VI Construction Bidding and Analysis

This Task consists of the following:

- A. The Corporation will transmit to the Consultant a copy of the invitation to bid and a notification to become available for questions from prospective bidders at the commencement of the period of advertising, receipt, and analysis of bids.
- B. Upon commencement of the period of advertising, receipt and analysis of bids (the "Bidding Period"), the Corporation shall transmit to the Consultant a copy of the invitation to bid whereupon the Consultant shall make itself readily available to answer all questions from prospective bidders regarding the construction contracts.
- C. The respective parties shall notify each other of any ambiguity or inconsistency in the bid documents as reported by the prospective bidders. The Consultant shall investigate all problems created by such ambiguities and inconsistencies and shall deliver to the Corporation an analysis and recommendations for resolution of such problems. If an addendum to the construction contract is deemed to be necessary by the Corporation, then the Consultant shall prepare and deliver such addendum to the Corporation within twenty-four (24) hours after request.
- D. The Consultant shall attend bidders meetings and bid openings as requested by the Corporation.
- E. Following the opening of the bids, the Corporation shall transmit to the Consultant copies of all the bids from construction contractors, which are to be transferred to the memorandum of bid sheet together with a request for a review and analysis of all of the submitted bids. Within five days after receipt of the bids, the Consultant shall submit to the Corporation an analysis of the bids received. In the event that the bid proposal required unit price bids, the Consultant shall check all the mathematical calculations and shall provide a breakdown of all items into their proper agency budget codes. The

Consultant shall analyze all unit prices to determine the suitability to all the costs with respect to the associated work items and shall determine any imbalances that may exist in the submitted bids.

- F. At no additional cost, the Consultant will work with the Corporation to optimize available funding and implement the set scope of work.
- G. If the low bids of all qualified and responsible construction contractors for the complete construction of the Project are in excess of the approved final cost estimate, the Consultant, if so required by the Corporation and at no extra cost, shall revise all or any parts of the Project that the Corporation shall deem necessary to bring the total construction cost of the Project within the approved final cost estimate.

Task VII Construction Support

The Consultant shall provide the following services during the construction stage to ensure that the work in general performed by the Construction Contractor conforms to this Scope of Services and the intent of the final documents. Under a separate contract the Corporation shall retain the services of a Resident Engineer.

- A. The Consultant shall attend job conferences, as directed and required by the Corporation. A duly authorized and competent representative may perform this work if approved in advance and in writing by the Corporation.
- B. The Consultant shall make frequent inspections of the Project, as required to inspect the construction and ascertain that the construction complies with the final design. The intent of the site visits is not to direct the Construction Contractor as to means, methods, and/or safety.
- C. If requested by the Corporation, the Consultant shall issue interpretation and clarification of the final documents and, if so required, make necessary changes in the work.
- D. The Consultant shall make recommendations in connection with change orders relating to design intent as requested by the Corporation.
- E. The Consultant is required to attend weekly meetings with the Corporation and others throughout the duration of the design and construction process.
- F. The Consultant shall approve/disapprove all shop drawings as submitted by Construction Contractors for the Project; prepare all supplementary drawings that may be necessary for the enlargement and clarification of the drawings prepared by it; and examine and approve/disapprove all materials samples.
- G. The Consultant shall check all shop drawings submitted by Construction Contractors or Construction Subcontractors working on the Project and shall determine whether such shop drawings are in accordance with the final design and contract drawings and

specifications for the Project and shall indicate what changes, if any, are necessary in any of the shop drawings, until said shop drawings conform to the final design, the contract drawings, and the specifications for the Project. The Consultant shall also prepare all supplementary drawings that may be necessary for enlargement and clarification of the contract drawings.

- H. The Construction Contractor shall submit to the Corporation and Consultant, a regular list of shop drawings for each construction contract or subcontract indicating progress with respect thereto. The information submitted shall consist of names of Construction Contractors and/or Construction Subcontractors, names of shop drawings, shop drawing due dates in accordance with approved shop drawing schedule required to be submitted by Construction Contractors, dates issued, dates received, dates checked, dates returned for corrections, dates resubmitted by Construction Contractors, dates finally approved by the Consultant, and any additional information that may be necessary to clearly indicate to the Corporation the progress of any applicable shop drawings. The Consultant shall work to meet the shop-drawing schedule.

Attachment 1

Additional Requirements for Street/Sidewalk Reconstruction

The Consultant shall provide the following Services for street, sidewalk and or streetscape reconstruction, improvements and or reconfiguration:

A. Street Design

1. The Consultant shall conform to the design standards as described in the Scope of Services and as listed in the most recent agency design directives, standard details, administrative procedural bulletins and guidelines for the prosecution of the Services, whether promulgated by DOT, DEP, DPR, or any other Agency having jurisdiction over any aspect of the Project or the Project Area.
2. Street design shall consist of the design of street components and appurtenances; coordination and preparation of plans, specifications and estimates; and related ancillary matters.
3. The Consultant shall prepare cost estimates for the Project based on the preliminary and final versions of the Contract Documents. The estimates shall give item numbers, item descriptions, unit quantities, unit prices, sub-totals, and totals based on the best available information and shall include all Agency work relating to the Project. In preparing the cost estimates, the Consultant shall use the most recent unit prices for all standard highway items as supplied by DDC. In addition to the preliminary and final estimates of cost required to be submitted by the Consultant, the Consultant shall maintain current information relating to the estimated cost of the Project during the period and shall inform the Corporation promptly in writing of any significant changes in such estimated cost due to market conditions or changes in the scope or design of the Project. A cost control program shall be maintained throughout the course of the design.
4. Project grades shall be designed to legal grade or within the framework of acceptable tolerances for legal grades, if applicable, while at the same time minimizing the negative impact upon adjacent trees, properties, underground infrastructure, and other relevant aspects of the Project Area. In connection with the development of Project grades, the Consultant shall prepare a full topographic and utility survey, based on the appended specifications in order to update data contained in the preliminary design investigation report to the extent necessary for the proper completion of this design element.
5. Roadway typical sections shall be developed and designed within the framework of DOT standards and existing cross sections for streets surrounding the Project boundaries.
6. Pavement restoration/transition areas shall be designed for all streets in and, as necessary, beyond the Project Area.

7. Project sidewalks shall be designed upon completion of a review of the Project profiles and the performance and review of the detailed sidewalk condition inventory for all properties within and abutting the Project boundaries. Designs shall be in keeping with the approved palette and patterns of materials.
8. Adjustments to City-owned castings shall be developed and designed, including details necessary for special casting adjustments.
9. Project curbs shall be designed in conjunction with usage and depth of pavement, and shall include type, locations and appropriate details.
10. Street drainage facilities shall be designed and shall include upgrading all substandard basins, inlets and connections, upgrading all substandard or deteriorated drainage facility manholes and the design of new basins, inlets and connections for existing drainage systems in accordance with DOT and DEP standards. The historical geotechnical data shall be utilized, indicating that drainage structures will be installed on piles. If additional geotechnical investigation is required by DEP the Consultant shall provide these services under a scope change, if authorized by the Corporation.
11. Pavement marking schemes shall be designed to account for lane delineation, pedestrian crossing and channelization.
12. Design aspects relating to the installation, relocation, redesign and/or rehabilitation of all traffic signs, signal system, street lights, arrows, markers, parking meters, and related items shall be developed in consultation with DOT and its Division of Street Lighting, as necessary.
13. Design aspects relating to the replacement, relocation and resetting of all fire department and police department facilities affected by the proposed street design shall be developed by the Consultant and approved by the affected fire and police departments, respectively.
14. Design aspects relating to the replacement or relocation of all sewers and water supply facilities, including mains, affected by the proposed street design shall be developed by the Consultant and approved by DEP. Replacement, reconstruction or relocation of sewers, regulators, tide gates and appurtenances, and water mains is within the scope of the contract but not funded for design. Upon request and funding commitment of DEP, the Corporation shall utilize the Consultant for perform design services to incorporate the sewer and water work. If any upgrade or replacement of the sewers and water supply facility are required by DEP that is not impacted by the design, then the Consultant shall provide these services under a separate scope change, if authorized by the Corporation.

B. Sewer Design

As part of the Services, the Consultant shall prepare drawings as required for drainage of the roadway. This work is not limited to relocation or reset of existing structures that are impacted by the design but shall include any and all necessary utilities in accordance with the Services.

If authorized by the Corporation under a scope change, the Consultant shall provide for additional sewer design work based on recommendations prepared by DEP after further review. In connection with sewer design, including the preparation of plans, specifications, engineer's estimate, and related materials if authorized by the Corporation under a scope change, the Consultant shall provide the following services:

1. Prepare and deliver copies of all final drawings and addenda for review by the Corporation, DEP and other Agencies and private utilities.
2. Prepare a construction sequence plan for the construction of sewer improvements coordinated with the reconstruction of streets, including all necessary temporary outlets and connections.

C. Water Main Design

The Consultant shall prepare drawings, if authorized by the Corporation under a scope change, for water main design of the Project. This work is limited to relocation or reset of existing structures that are impacted by the design. The Consultant shall provide for the preparation of a water main design in conjunction with the Project. This design work shall include the rehabilitation, replacement or relocation of existing water mains and/or the installation of new water mains, including the design of all other appurtenances.

1. The scope of work for the water main design shall include preparation of a pre-final water main design in cooperation with DEP, obtaining of approvals from DEP and the Corporation for such design, and incorporation of the water main design, as approved by DEP and the Corporation, into the Final Design and the final Contract Documents.

D. Traffic Signal System Design

1. The Consultant shall prepare a traffic signal system design in conjunction with the Project. This design work shall include the modernization of existing traffic signal systems, and/or the installation of new traffic signal systems, including the design or redesign of all other appurtenances.
2. The scope of work for the traffic signal system design shall include the following:
 - a. Preparation of a traffic signal system design, the submission of said design to DOT's Bureau of Traffic Operations for review and comment, incorporation of such comments into the schematic design, and obtaining DOT's approval of the schematic design for the traffic signal system;
 - b. Preparation of necessary or appropriate addenda to standard traffic signal system specifications, estimates of cost and such pertinent engineering data as may be required for the proper traffic signal system design, including drawings prepared in accordance with DOT's standards and showing, to DOT's satisfaction, (a) all

intersections within the Project Area requiring traffic signal work, (b) details of signal display, pole type sensor and detector locations, (c) details of telephone connections, and control and conduit locations, and (d) any additional information necessary or appropriate to adequately explain the design concept;

- c. During preparation of the traffic signal system design, confer and meet with DOT in order to coordinate requirements for the traffic signal system design with all other aspects of the Project and confer or, where necessary, meet with other Agencies having jurisdiction over any aspect of the Project or the Project Area, including, without limitation, New York Telephone Co. and/or the Empire City Subway Co., Ltd. ("ECS"), in order to integrate any of the contemplated work into the Project; and
- d. In preparing the traffic signal system design, the Consultant shall collect pertinent information and data by:
 - (1) Utilizing all information contained in the plotted topographic and utility surveys prepare as part of the Services;
 - (2) Inspecting the Project Area, particularly where all proposed traffic signal system work is to be undertaken, and becoming familiar with all contiguous intersections/streets; and
 - (3) Searching and reviewing all available and relevant signal design schemes, traffic counts, timing charts and intersection control orders prepared by DOT.

E. Street Lighting System Design

- 1. The Consultant shall prepare a street lighting system design in conjunction with the Project. This design work shall include the rehabilitation, replacement or relocation of existing street lighting systems, including the design of all other appurtenances.
- 2. The scope of work for the street lighting system design shall include preparation of a lighting system design in cooperation and accordance with DOT's Division of Street Lighting.

F. Maintenance and Protection of Traffic

- 1. The Consultant shall develop a program for the maintenance of traffic, which program is to be incorporated into the Contract Documents, and shall include:
 - a. Becoming familiar with the vehicular and pedestrian traffic conditions of the Project Area, and reviewing all relevant available vehicular and pedestrian traffic data;

- b. Reviewing any alternatives to the maintenance of traffic with the Corporation, DOT's Bureau of Traffic Operations, and any other affected Agencies, authorities and private entities as required;
- c. Preparing a maintenance of traffic scheme for the Project work, including but not limited to, drainage, traffic signals, and related matters, which shall be developed in detail and shall include plans, drawings, details and/or written descriptions as necessary.

APPENDIX C

PAYMENTS

APPENDIX C

PAYMENTS BASED ON HOURLY RATES

Interim payments shall be made to the Consultant no more frequently than monthly based on the number of hours members of the Consultant's staff, as shown on the Staff and Fee Schedule annexed hereto as Exhibit 1 to this Appendix C, spent providing the Services, multiplied by the hourly rate and applicable multiplier for each such member of the Consultant's staff on the Staff and Fee Schedule, 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, Retainage will not be applied against Allowable Additional Costs.

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

EXHIBIT 1 TO APPENDIX C
STAFF AND FEE SCHEDULE

SAMPLE, POSITIONS AND OFFICES ARE EXAMPLES ONLY

MULTIPLIER USED: 0.00 (Amount below are hours x rate x multiplier)

	PHASE	RATE	Project Manager	Engineer	Architect	Estimator	Field Superintendent
Task I	Preliminary	Hours	0	0	0	0	0
	Review & Coordination	Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task II							
A. Topographic Survey		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
B. Utility/Survey		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
C. Test Pit Programs (As required)		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
D. Traffic Analysis		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task III	Schematic Design	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task IV	Design Development	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task V	Final Design/ Construction Documents	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task VI	Construction Bidding & Analysis	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task VII	Construction Support	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
TOTALS		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

TOTAL BEFORE EXPENSES \$ 0.00

(Add more fields or provide more pages for staff used, as necessary).

ALLOWABLE ADDITIONAL COSTS (TO BE LISTED AS FOLLOWS)

Surveying	\$ _____
Test Pits	\$ _____
Traffic Analysis	\$ _____
Traffic Counts	\$ _____
Sewer Inspection	\$ _____
Revocable Consent	\$ _____
Printing/Reproduction	\$ _____
Miscellaneous Expenses	\$ _____

*The following items are not considered Allowable Additional Costs: local travel, local telephone calls, local fax transmissions, regular mail, and home office copying. The costs for special printing/copying, special deliveries and other reasonable Project related expenses, as approved in advance by the Corporation, are reimbursable.

EXHIBIT 2 TO APPENDIX C
EFT ENROLLMENT FORM



New York City
Economic Development
Corporation

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)

--	--	--	--	--	--	--	--	--	--

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

3. VENDOR'S PRIMARY ADDRESS:

4. VENDOR'S EMAIL ADDRESS:

5. CONTACT PERSON NAME:

6. CONTACT PERSON TELEPHONE NUMBER:

SECTION II – FINANCIAL INSTITUTION INFORMATION

1. BANK ACCOUNT NUMBER:

2. ACCOUNT NAME:

3. BANK NAME:

4. BANK BRANCH ADDRESS:

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

--	--	--	--	--	--	--	--	--	--

6. ACCOUNTING TYPE: (CHECK ONE)

☐

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):

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

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

Automobile Liability:

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

Umbrella/Excess Liability:

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

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

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

In statutory amounts

Marine Protection and
Indemnity:

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

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

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

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

Contractor Pollution Liability (“CPL”) Policy and, as applicable, Asbestos Abatement Liability Policy, Lead Abatement Contractors Liability Policy, Stop Loss Policy, Professional Services Policy, Pollution Legal Liability (“PLL”) Policy, Transportation Coverage and Non-Owned Disposal Site Coverage:	\$5,000,000 combined single limit per occurrence for bodily injury or death, and property damage, but if an annual aggregate is applicable to the policy not less than \$5,000,000 in the aggregate per year dedicated to this Project, on an “occurrence” basis, with a term of not less than ten (10) years
---	---

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

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

Professional Liability/Errors &
Omissions Insurance:

Professional liability (“PL”) and/or errors and omissions (“E & O”) insurance policies shall be written with a minimum amount of \$1,000,000 per claim and \$2,000,000 in the aggregate.

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

APPENDIX E

INSURANCE REQUIREMENTS

2. Additional Insureds

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

New York City Economic Development Corporation
The City of New York

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

APPENDIX E
INSURANCE REQUIREMENTS

3. Required Provisions

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

“A. Notices from the insurer (the “Insurer”) to the New York City Economic Development Corporation (the “Corporation”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, New York City Economic Development Corporation, at 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 G

E.O. 50 EMPLOYMENT REPORT FORM

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

“ProjectsOpportunities/WorkingWithNYCEDC/VendexOtherForms”.

If the Consultant cannot access or download these forms, the Corporation will, upon request, send the Consultant the required forms.

Non-Construction Consulting Contracts

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

[Supply & Service Employment Report Instructions](#) (PDF 273 KB)

[Supply & Service – under 50 employees](#) (PDF 18 KB)

[Supply & Service – full form](#) (PDF 142 KB)

APPENDIX H

E.O. 50 PAYROLL REPORT FORM AND INSTRUCTIONS



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
Bureau of LABOR LAW

PAYROLL REPORT
(TO BE SUBMITTED WITH REQUISITION FOR PAYMENT)

NAME OF CONTRACTOR/RECONTRACTOR		ADDRESS		PHONE NO.		PAYROLL No.	
CONTRACT REG. NO.		JOB CODE		WEEK ENDING DATE:		TAX ID No.	
PROJECT NAME & LOCATION							

		(1)	(2)	(3)		(4)							(5)	(6)	(7)	(8)	UNEMPLOYMENT BENEFITS		(9)	(10)	(11)	(12)	(13)
NAME, ADDRESS, SOCIAL SECURITY NO.	LIST TRADE & GROSS CLASSIFICATION JOURNEYPERSON APPRENTICE GROUP OTHER	T M E	HOURS WORKED EACH DAY	DAY AND DATE							TOTAL HOURS	BASE RATE OF PAY PER HOUR	TOTAL BASE PAY	RATE PER HOUR	PAID TO LOCAL # (if Union is Checked)	TOTAL PAID	GROSS PAY TOTAL TAX & OTHER DEDUCTIONS	NET PAY					
	J A H	RT OT															U Local No. E O						
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INSTRUCTIONS FOR PREPARING AND SUBMITTAL OF A PAYROLL REPORT

1. All persons who perform any on-site construction activity, during the period of requisition, shall be listed on the Payroll Report.
2. Separate Payroll Reports shall be submitted by the prime contractor and each sub-contractor who performs any on-site construction activity during the period of the requisition.
3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment reduced.

4. **PAYROLL REPORT HEADING:** The spaces between the first set of double lines shall be referred to as the Payroll Report Heading and shall require the following information:

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

ADDRESS: Insert the current address (i.e. Street, City, State & Zip Code) of the firm submitting the Payroll Report.

PHONE No.: Enter the telephone number of the firm in the space provided.

PAYROLL No.: In the space provided, enter the Payroll Number of the Contractor or Sub-Contractor.

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

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

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

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

TAX I.D. No.: Enter in this space the Federal Tax Identification Number of the Contractor or Sub-Contractor as applicable.

5. For every employee who performs any on-site construction activity during the period of the Payroll Report, the following information shall be provided:

- 1) **NAME, ADDRESS, SOCIAL SECURITY NO.:** The Legal name, current address and social security number of each employee.
- 2) **LIST TRADE & CIRCLE WORK CLASSIFICATION:** Specify & insert the Trade applicable to the work performed by each employee. The Trade identified must be one listed on the Prevailing Wage & Supplemental Benefits Schedule of the Comptroller. Circle the letter J if the individual is a Journeyman, the letter A if the person is a Registered Apprentice with the Department of Labor of the State of New York, or the letter H if the person is a Helper and listed as such against the appropriate Trade on the Comptroller's Schedule of Prevailing Wages.
- 3) **TIME:** RT relates to Regular Time, and OT relates to Over Time.
- 4) **DAY AND DATE:** Below this heading, in the first row enter the appropriate sequence of the contractor's pay records: MTWTFSS, for example, is the sequence to use if the workweek ends on a Sunday and SSMTWTF is the sequence if the workweek ends on a Friday. In the second row, below each letter representing the day of the payweek, insert the corresponding date. Below the heading **HOURS WORKED EACH DAY** at the intersection of the column of the particular day and date and the horizontal row of the employee's name, insert the hours worked each day in the appropriate Box either for RT (Regular Time) and / or OT (Over Time). If an employee worked Shift Time the RT (Regular Time) row shall be used and adjusted accordingly.
- 5) **TOTAL HOURS:** Sum the hours worked for Regular and / or Shift Time, the hours worked Overtime, and enter separate totals in this column.
- 6) **BASE RATE OF PAY PER HOUR:** Specify the actual base rate of pay per hour paid to the employee. Do not include supplemental benefits in this amount.
- 7) **TOTAL BASE PAY:** Total amount earned by the employee, not including benefits.

SUPPLEMENTAL BENEFITS:

- 8) **RATE PER HOUR:** Amount of Supplemental Benefits paid / provided per hour.
- 9) **TO:** Place a check mark in the appropriate box U for Union, E for Employee if benefits paid in cash (or check) directly to the Employee or O for other, if benefits otherwise paid / provided. If U is checked you must insert the "Local" number of the union in that box.
- 10) **TOTAL PAID:** Total amount of Supplemental Benefits paid / provided for the payweek.
- 11) **GROSS PAY:** Total amount earned for payweek. This amount comprises the Total Base Pay plus any benefit paid in cash (or check) directly to the employee [i.e. column (7) + column (9) E if Box E is checked and payment made directly to employee]. No other type of benefit must be included in this column's total.
- 12) **TOTAL TAX AND OTHER DEDUCTIONS:** Enter the sum total of all deductions in this column (including FICA, Federal, State & City Taxes, etc.). This does not absolve you from maintaining appropriate tax & other records required by law).
- 13) **NET PAY:** Total amount of pay after all deductions (i.e. the actual Take-Home Pay).

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

ARRA SUPPLEMENT

Work performed under this Contract will be funded, in whole or in part, with funds appropriated through the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act" or "ARRA"). The Recovery Act's purposes are to stimulate the economy and to create and retain jobs.

The following supplemental terms and conditions apply to the work performed under this Contract. In the event of conflict between the other terms and conditions of this Contract and the ARRA Supplement, the terms and conditions of this ARRA Supplement shall govern.

The Contractor shall cooperate with the City with respect to the City's reporting requirements under Section 1512 of the Recovery Act, as such requirements may be amended or clarified by law or regulation, by providing any information requested by the City or by other authorized federal or State authorities related to such reporting requirements.

The Contractor must comply with all requirements of ARRA. If the Contractor believes there is any inconsistency between ARRA requirements and current contract requirements, the issues will be referred to the Contracting Officer for reconciliation.

Be advised that special provisions may apply to projects funded by ARRA relating to:

- ☐ Reporting, tracking and segregation of incurred costs;
- ☐ Reporting on job creation and preservation;
- ☐ Publication of information on the Internet;
- ☐ Protecting whistleblowers; and
- ☐ Requiring prompt referral of evidence of a false claim to the Inspector General.

Wage Rates

Pursuant to Section 1606 of the Recovery Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See 2 CFR §§176.80 et seq. See also <http://www.dol.gov/esa/whd/contracts/dbra.htm> (re Davis Bacon).

Publication

Information about this Contract will be published on the Internet, including on the website www.recovery.gov, maintained by the Recovery Accountability and Transparency Board (the "Board"). The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

Registration Requirements

Contractors and all first-tier subcontractors shall obtain a Data Universal Numbering System ("DUNS") number (or update the existing DUNS record), and register with the Central Contractor Registration ("CCR") database at <http://www.ccr.gov>.

Whistleblower Protections Under ARRA

- (a) Section 1553 of the Recovery Act provides certain protections for whistleblowers.
- (b) Pursuant to Section 1553(e), the Contractor shall post notice of the rights and remedies for whistleblower protections provided under Section 1553. Specifically, the Contractor shall post Section 1553 itself, which is attached to this Supplement.
- (c) The Contractor shall include the substance of this clause including this paragraph (c) in all subcontracts.

Accounts, Records, and Inspection

- (a) Accounts. The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Contractor in connection with the work under this Contract, other applicable credits, negotiated fixed amounts, and fee accruals under this Contract; and the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this Contract. The system of accounts employed by the Contractor shall be satisfactory to the City and in accordance with generally accepted accounting principles consistently applied.
- (b) Inspection and audit of accounts and records. All books of account and records relating to this Contract shall be subject to inspection and audit by the City, the Federal Government, or their designees at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the Contractor shall afford the City or the Federal Government proper facilities for such inspection and audit.
- (c) Audit of subcontractors' records. The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the

amount payable to the subcontractor of any tier, to either conduct an audit of the subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the contracting officer.

(d) Disposition of records. Except as agreed upon by the City, the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this Contract, other applicable credits, and fee accruals under this Contract, shall be the property of the City and/or the Government, and shall be delivered to the City, the Government or otherwise disposed of by the Contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this Contract and final audit of accounts hereunder. Except as otherwise provided in this Contract, all other records in the possession of the Contractor relating to this Contract shall be preserved by the Contractor for a period of 6 years after final payment under this Contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.

(e) Reports. The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this Contract as the contracting officer may from time to time require.

(f) Inspections. The City and the Federal Government shall have the right to inspect the work and activities of the Contractor under this Contract at such time and in such manner as they shall deem appropriate.

(g) Subcontracts. The Contractor further agrees to require the inclusion of provisions substantively the same to those in paragraphs (a) through (g) and paragraph (h) of this clause in all subcontracts (including fixed price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the subcontractor.

(h) Comptroller General, Inspector General.

(1) Pursuant to Section 902 of the Recovery Act, the Comptroller General of the United States and his representatives are authorized to: 1) examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract, and 2) interview any officer or employee of the contractor or any of its subcontractors regarding such transactions.

(2) Section 1515(a) of the Recovery Act authorizes any representative of the Inspector General of a relevant Federal agency to: (1) examine any records of the Contractor and any of its subcontractors, as well as the grantee or any State or local agency administering the Contract, that pertain to, and involve transactions relating to, the

Contract or subcontract; and (2) interview any officer or employee of the Contractor, grantee, subgrantee, or agency regarding such transactions.

(i) Pursuant to the regulations promulgated at 2 CFR Part 176, detailed information required by the Federal Funding Accountability and Transparency Act of 2006, as amended (the "Transparency Act") must be provided. This information includes, but is not limited to the items listed below. The Contractor shall provide any information required by the contracting officer to meet this obligation.

1. The name of the entity receiving the award;
2. The amount of the award;
3. The transaction type;
4. The funding agency;
5. The Catalog of Federal Domestic Assistance number;
6. The program source;
7. The location of the entity receiving the award, including four data elements for the city, State, Congressional district, and country;
8. The location of the primary place of performance under the award, including four data elements for the city, State, Congressional district, and country;
9. A unique identifier of the entity receiving the award;
10. A unique identifier of the parent entity of the recipient, should the recipient be owned by another entity; and
11. The names and total compensation of the five most highly compensated officers of the company if it received (1) 80% or more of its annual gross revenues in Federal awards; and (2) \$25M or more in annual gross revenue from Federal awards.

WHISTLEBLOWER PROTECTIONS UNDER ARRA

SEC. 1553. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS.

(a) PROHIBITION OF REPRISALS.—An employee of any non-Federal employer receiving covered funds may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of—

- (1) gross mismanagement of an agency contract or grant relating to covered funds;
- (2) a gross waste of covered funds;
- (3) a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- (4) an abuse of authority related to the implementation or use of covered funds; or
- (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

(b) INVESTIGATION OF COMPLAINTS.—

(1) IN GENERAL.—A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint regarding the reprisal to the appropriate inspector general. Except as provided under paragraph (3), unless the inspector general determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the inspector general shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the person's employer, the head of the appropriate agency, and the Board.

(2) TIME LIMITATIONS FOR ACTIONS.—

(A) IN GENERAL.—Except as provided under subparagraph

(B), the inspector general shall, not later than 180 days after receiving a complaint under paragraph (1)—

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(i) make a determination that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint; or

(ii) submit a report under paragraph (1).

(B) EXTENSIONS.—

(i) VOLUNTARY EXTENSION AGREED TO BETWEEN INSPECTOR GENERAL AND COMPLAINANT.—If the inspector general is unable to complete an investigation

under this section in time to submit a report within the 180-day period specified under subparagraph (A) and the person submitting the complaint agrees to an extension of time, the inspector general shall submit a report under paragraph (1) within such additional period of time as shall be agreed upon between the inspector general and the person submitting the complaint.

(ii) EXTENSION GRANTED BY INSPECTOR GENERAL.—

If the inspector general is unable to complete an investigation under this section in time to submit a report within the 180-day period specified under subparagraph (A), the inspector general may extend the period for not more than 180 days without agreeing with the person submitting the complaint to such extension, provided that the inspector general provides a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for the decision, which shall be provided to both the person submitting the complaint and the non-Federal employer.

(iii) SEMI-ANNUAL REPORT ON EXTENSIONS.—The inspector general shall include in semi-annual reports to Congress a list of those investigations for which the inspector general received an extension.

(3) DISCRETION NOT TO INVESTIGATE COMPLAINTS.—

(A) IN GENERAL.—The inspector general may decide not to conduct or continue an investigation under this section upon providing to the person submitting the complaint and the non-Federal employer a written explanation (subject to the authority to exclude information under paragraph (4)(C)) for such decision.

(B) ASSUMPTION OF RIGHTS TO CIVIL REMEDY.—Upon receipt of an explanation of a decision not to conduct or continue an investigation under subparagraph (A), the person submitting a complaint shall immediately assume the right to a civil remedy under subsection (c)(3) as if the 210-day period specified under such subsection has already passed.

(C) SEMI-ANNUAL REPORT.—The inspector general shall include in semi-annual reports to Congress a list of those investigations the inspector general decided not to conduct or continue under this paragraph.

(4) ACCESS TO INVESTIGATIVE FILE OF INSPECTOR GENERAL.—

(A) IN GENERAL.—The person alleging a reprisal under this section shall have access to the investigation file of H. R. 1—185

the appropriate inspector general in accordance with section 552a of title 5, United States Code (commonly referred to as the “Privacy Act”). The investigation of the inspector general shall be deemed closed for purposes of disclosure under such section when an employee files an appeal to an agency head or a court of competent jurisdiction.

(B) CIVIL ACTION.—In the event the person alleging the reprisal brings suit under subsection (c)(3), the person alleging the reprisal and the non-Federal employer shall have access to the investigative file of the inspector general in accordance with the Privacy Act.

(C) EXCEPTION.—The inspector general may exclude from disclosure—

(i) information protected from disclosure by a provision of law; and

(ii) any additional information the inspector general determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the inspector general determines that disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(5) PRIVACY OF INFORMATION.—An inspector general investigating an alleged reprisal under this section may not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(c) REMEDY AND ENFORCEMENT AUTHORITY.—

(1) BURDEN OF PROOF.—

(A) DISCLOSURE AS CONTRIBUTING FACTOR IN REPRISAL.—

(i) IN GENERAL.—A person alleging a reprisal under this section shall be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in subsection (a) was a contributing factor in the reprisal.

(ii) USE OF CIRCUMSTANTIAL EVIDENCE.—A disclosure may be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including—

(I) evidence that the official undertaking the reprisal knew of the disclosure; or

(II) evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(B) OPPORTUNITY FOR REBUTTAL.—The head of an agency may not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under subparagraph (A) if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

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(2) AGENCY ACTION.—Not later than 30 days after receiving an inspector general report under subsection (b), the head of the agency concerned shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by subsection

(a) and shall either issue an order denying relief in whole or in part or shall take 1 or more of the following actions:

(A) Order the employer to take affirmative action to abate the reprisal.

(B) Order the employer to reinstate the person to the

position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the agency or a court of competent jurisdiction.

(3) CIVIL ACTION.—If the head of an agency issues an order denying relief in whole or in part under paragraph (1), has not issued an order within 210 days after the submission of a complaint under subsection (b), or in the case of an extension of time under subsection (b)(2)(B)(i), within 30 days after the expiration of the extension of time, or decides under subsection (b)(3) not to investigate or to discontinue an investigation, and there is no showing that such delay or decision is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant may bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy. Such an action shall, at the request of either party to the action, be tried by the court with a jury.

(4) JUDICIAL ENFORCEMENT OF ORDER.—Whenever a person fails to comply with an order issued under paragraph (2), the head of the agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorneys fees and costs.

(5) JUDICIAL REVIEW.—Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5, United States Code.

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(d) NONENFORCEABILITY OF CERTAIN PROVISIONS WAIVING RIGHTS AND REMEDIES OR REQUIRING ARBITRATION OF DISPUTES.—

(1) WAIVER OF RIGHTS AND REMEDIES.—Except as provided under paragraph (3), the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

(2) PREDISPUTE ARBITRATION AGREEMENTS.—Except as provided

under paragraph (3), no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising under this section.

(3) EXCEPTION FOR COLLECTIVE BARGAINING AGREEMENTS.—

Notwithstanding paragraphs (1) and (2), an arbitration provision in a collective bargaining agreement shall be enforceable as to disputes arising under the collective bargaining agreement.

(e) REQUIREMENT TO POST NOTICE OF RIGHTS AND REMEDIES.—

Any employer receiving covered funds shall post notice of the rights and remedies provided under this section.

(f) RULES OF CONSTRUCTION.—

(1) NO IMPLIED AUTHORITY TO RETALIATE FOR NON-PROTECTED DISCLOSURES.—Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) or to modify or derogate from a right or remedy otherwise available to the employee.

(2) RELATIONSHIP TO STATE LAWS.—Nothing in this section may be construed to preempt, preclude, or limit the protections provided for public or private employees under State whistleblower laws.

(g) DEFINITIONS.—In this section:

(1) ABUSE OF AUTHORITY.—The term “abuse of authority” means an arbitrary and capricious exercise of authority by a contracting official or employee that adversely affects the rights of any person, or that results in personal gain or advantage to the official or employee or to preferred other persons.

(2) COVERED FUNDS.—The term “covered funds” means any contract, grant, or other payment received by any non-Federal employer if—

(A) the Federal Government provides any portion of the money or property that is provided, requested, or demanded; and

(B) at least some of the funds are appropriated or otherwise made available by this Act.

(3) EMPLOYEE.—The term “employee”—

(A) except as provided under subparagraph (B), means an individual performing services on behalf of an employer; and

(B) does not include any Federal employee or member of the uniformed services (as that term is defined in section 101(a)(5) of title 10, United States Code).

(4) NON-FEDERAL EMPLOYER.—The term “non-Federal employer”—

(A) means any employer—

(i) with respect to covered funds—

(I) the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor,
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subcontractor, grantee, or recipient is an employer; and

(II) any professional membership organization, certification or other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or

(ii) with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor of the State or local government; and

(B) does not mean any department, agency, or other entity of the Federal Government.

(5) STATE OR LOCAL GOVERNMENT.—The term “State or local government” means—

(A) the government of each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or any other territory or possession of the United States; or

(B) the government of any political subdivision of a government listed in subparagraph (A).

APPENDIX K
STANDARD STATE CLAUSES
INTENTIONALLY DELETED

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: _____

APPENDIX M

DOING BUSINESS DATA FORM

The Consultant shall complete and submit a Doing Business Data Form which can be found at <http://www.nycedc.com> in the following section (as set forth below):

“ProjectsOpportunities/WorkingWithNYCEDC/VendexOtherForms”.

If the Consultant cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

DOING BUSINESS ACCOUNTABILITY PROJECT FORMS

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

If you have any questions or concerns, please contact the **Doing Business Accountability Project** at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.

 [Doing Business Form](#) (829 KB)

 [Doing Business Form-Real Property](#) (953 KB)

 [Q&A General](#) (35 KB)

 [Q&A Real Property](#) (35 KB)

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

**EXHIBIT 2
TO
REQUEST FOR PROPOSALS

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

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

**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
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

**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
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

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

SAMPLE, POSITIONS AND OFFICES ARE EXAMPLES ONLY

MULTIPLIER USED: 0.00 (Amount below are hours x rate x multiplier)

	PHASE	RATE	Project Manager	Engineer	Architect	Estimator	Field Superintendent
Task I	Preliminary Review & Coordination	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task II							
A. Topographic Survey		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
B. Utility/Survey		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
C. Test Pit Programs (As required)		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
D. Traffic Analysis		Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task III	Schematic Design	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

Task IV	Design Development	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task V	Final Design/ Construction Documents	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task VI	Construction Bidding & Analysis	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00
Task VII	Construction Support	Hours	0	0	0	0	0
		Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

TOTALS	Hours	0	0	0	0	0
	Amount	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00

TOTAL BEFORE EXPENSES \$ 0.00

(Add more fields or provide more pages for staff used, as necessary).

ALLOWABLE ADDITIONAL COSTS (TO BE LISTED AS FOLLOWS)

Surveying	\$ _____
Test Pits	\$ _____
Traffic Analysis	\$ _____
Traffic Counts	\$ _____
Sewer Inspection	\$ _____
Revocable Consent	\$ _____
Printing/Reproduction	\$ _____
Miscellaneous Expenses	\$ _____

*The following items are not considered Allowable Additional Costs: local travel, local telephone calls, local fax transmissions, regular mail, and home office copying. The costs for special printing/copying, special deliveries and other reasonable Project related expenses, as approved in advance by the Corporation, are reimbursable.

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
PROJECT CODE NO. 3880**

**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

Contractor: Fair Trade Associates, Inc.

Total Percentage of Work to be Subcontracted:

46%

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 (Overall Dollar Value of Proposal multiplied by the Target Subcontracting Percentage): [i.e., \$10,000,000 x 30%]						\$3,000,000.00		
Participation Goal:						20%		
Total Dollar Value of Participation Goal (Total Dollar Value of Target Subcontracting Percentage multiplied by the Participation Goal): [i.e., \$3,000,000 x 20%]						\$600,000.00		

Signature: S/XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Date: 0X/XX/0X

Printed Name: Nick Danger

Title: President

**NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
PHASE II
QUEENS PLAZA STREETSCAPE PROJECT
REQUEST FOR PROPOSALS
FOR DESIGN SERVICES
NYCEDC CONTRACT NO. 38800001
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**EXHIBIT 4
TO
REQUEST FOR PROPOSALS
DOING BUSINESS DATA FORM**

Each respondent shall complete and submit a Doing Business Data Form which can be found at <http://www.nycedc.com> in the following section (as set forth below):

“ProjectsOpportunities/WorkingWithNYCEDC/VendexOtherForms”.

If the Respondent cannot access or download these forms, the Corporation may, upon request, send the Consultant the required forms.

DOING BUSINESS ACCOUNTABILITY PROJECT FORMS

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

If you have any questions or concerns, please contact the **Doing Business Accountability Project** at 212-788-8104 or DoingBusiness@cityhall.nyc.gov.

 [Doing Business Form](#) (829 KB)

 [Doing Business Form-Real Property](#) (953 KB)

 [Q&A General](#) (35 KB)

 [Q&A Real Property](#) (35 KB)