

**New York City
Police Department**



**REQUEST FOR PROPOSAL FOR FURNISHING ALL LABOR AND
MATERIAL NECESSARY AND REQUIRED FOR:
PIN 05609000629: INVOICED AUTO TOWING, STORAGE, AUCTIONING
and SALVAGING SERVICES**

**Proposals Due:
2:00 PM, March 2, 2009
(Unless Extended)**

**Submit Proposals to:
Frank Bello, Agency Chief Contracting Officer
NYPD Contract Administration Unit
51 Chambers Street, Room 310
New York, New York 10007**

**For questions: 646-610-5220
or frank.bello@nypd.org**

**THE CITY OF NEW YORK
POLICE DEPARTMENT
REQUEST FOR PROPOSALS**

**TITLE: Invoiced Auto Towing, Storage, Auction, and Salvage Services (IATSASS)
PIN #: 056090000629**

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AUTHORIZED AGENCY CONTACT PERSON

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

Name: Frank Bello
Title: Assistant Commissioner, Contract Administration Unit
Mailing Address: 51 Chambers Street, Room 310
New York, New York 10007
Telephone #: 646-610-5220
Fax #: 646-610-5129
E-Mail Address: frank.bello@nypd.org

SECTION I - TIMETABLE

A. Release Date of this Request for Proposals: February 5, 2009

All questions and requests for additional information concerning this RFP should be directed to Frank Bello, the Authorized Agency Contact Person, at:

Telephone #: 646-610-5220
Fax #: 646-610-5129
E-Mail Address: frank.bello@nypd.org

B. Pre-Proposal Conference and Site Visit:

Date: February 17, 2009
Time: 10:00 AM (SHARP!)
Location: College Point Auto Pound
129-05 31st Avenue
College Point, NY 11354

Attendance by proposers is optional but recommended by the Agency.

C. Proposal Due Date and Time and Location:

Date: March 2, 2009
Time: 2:00 PM
Location: Proposals shall be submitted to **Frank Bello, Agency Chief Contracting Officer** located at **51 Chambers Street, Room 310, New York, New York 10007**.

E-mailed or faxed proposals will not be accepted by the Agency.

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

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

E. Anticipated Contract Start Date: July 1, 2009

SECTION II - SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of RFP

This Request for Proposals is for the provision of Invoiced Auto Towing, Storage, Auction, and Salvage Services (**IATSASS**). The Department is seeking an appropriately qualified contractor to intake, store, and release up to 9,000 non-evidence vehicles *per year*, with an average *daily* inventory of up to 5,000 vehicles. The contractor will be required to tow these vehicles from various Police Department locations around New York City. The contractor will safeguard, and follow the requirements stated herein to manage, up to 5,000 vehicles per day, including the salvage and auction of unclaimed vehicles and the return of claimed vehicles to their owner. Upon award of the contract, the contractor will begin this process by immediately removing and storing approximately 4,000 non-evidence vehicles currently being safeguarded at four (4) separate NYPD storage facilities. The four storage facilities are listed below in §III.C.2.

It is anticipated that subcontracting will be required for this contract because there are several components to the work required—namely: towing, storage and management, and auctioning and salvage. For this reason, this contract will require M/WBE goals as further described below in Section III.H.

B. Anticipated Contract Term

It is anticipated that the contract awarded from this RFP will have a term of three years. The contract may include two 2-year options to renew. The Department reserves the right, prior to contract award, to determine the length of the initial contract term and each option to renew, if any.

C. (Anticipated) Payment Structure

The contractor will provide its prices for the fees for towing and storing, as well as the commission it will return to the City for the auctioning/salvage of vehicles. The contractor will complete Attachment C “Price Proposal” to the Department listing the costs for **ALL** services to be performed by the contractor. This cost sheet will include the price structure for the following:

1. Towing costs for regular and large size vehicles (per tow).
2. Storage costs for regular and large size vehicles (per day).
3. Anticipated auction proceeds for vehicles.
4. Anticipated salvage proceeds for vehicles.
5. Amount to be remitted to the City from auction/salvage proceeds (Commission).
6. Towing cost for the initial tow of approximately 4,000 vehicles from the four (4) NYPD locations to the contractor site.

It is anticipated that the payment structure of the contract(s) awarded from this RFP will be based on a combination of the prices set forth in Attachment C “Price Proposal” for towing fees, storage fees, less an auction/salvage commission (which will offset the towing and storage fees). However, the Department will consider proposals to structure payments in a different manner

and reserves the right to select any payment structure that is in the City's best interest. Payment Escalations shall be considered during the two 2-year renewal options only. Such payment escalations shall be based on the Bureau of Labor Statistics Contract Escalation index (<http://www.bls.gov/bls/escalation.htm>) with a cap not to exceed 5% annually.

D. Minimum Qualification Requirements

The following are the Minimum Qualification Requirements of this RFP. Any of the Proposals that fail to meet all of these requirements will be rejected.

The contractor and/or its subcontractor(s) must:

1. Be licensed to tow vehicles inside NYC and any locality through which the vehicle and tow may travel though and finally reside.
2. Be licensed to store, salvage, and auction vehicles in the State and locality in which the facilities are located.

Contractors must provide a copy of all legally required licenses from all applicable States and localities pertinent to the Contractor's operations. Such copies must be attached to the "Proposal Cover Letter" described herein in Attachment A.

SECTION III - SCOPE OF SERVICES AND MWBE REQUIREMENTS

A. Department Goals and Objectives for this RFP

The Department's objective for this RFP is to reduce the number of non-evidence vehicles currently stored in the Property Clerk storage facilities. The majority of these vehicles are abandoned or recovered stolen and are unclaimed by the lawful owner. Other categories include vehicles held in connection with civil forfeiture proceedings and vehicles held for safekeeping until the authorized owner or representative claims the vehicle.

B. Overview

1. The contractor will provide for **IATSASS**--towing, storing, releasing and salvaging/auctioning vehicles in a facility or facilities owned/leased by the contractor. If more than one facility is used, however, each site should have a capacity to store a minimum of 500 vehicles. The total capacity of all sites will not be less than 5,000 vehicles at one time. (The Contractor should be able to process approximately 180% of the total capacity it is able to hold in any given year. This percentage is derived by the following ratio-- 9,000 vehicles per year (average) processed / 5,000 vehicles stored (average) per day.
2. The contractor will submit its prices for the towing and storage of vehicles, as well as the percentage of auction/salvage proceeds that will be remitted to the NYPD-on the Attachment C price proposal forms only. The contractor may subcontract components of

the proposed work to other contractors. The contractor will be responsible for the performance of its subcontractors.

3. The contractor and any subcontractors will interface with various units within the NYPD including but not limited to the Property Clerk Division, the Civil Enforcement Unit and the Chief of Patrol's Rotation Tow Liaison. The contractor and/or subcontractors will also interface with the public.
4. The storage location(s) will be within 45 linear miles from any of the contiguous boundaries of the City of New York.

C. Scope of Work

The Property Clerk Division manages (intakes and releases) approximately 10,000 vehicles per year. Approximately 1,000 vehicles are kept for evidentiary purposes, and will not be included for consideration in this procurement. The remaining 9,000 vehicles are taken into custody according to the following categories: Rotational Tow (Ro-Tow), Forfeiture, and Safekeeping. The Property Clerk Division also auctions certain vehicles taken into custody by the Parking Enforcement Division and therefore, intakes these vehicles into its facilities and stores them prior to auctioning. The contractor will provide towing, storage, and auctioning/salvage/release for the Rotation Tow, Forfeiture, Safekeeping, and Parking Enforcement Division vehicles, **as well as any other vehicles deemed appropriate by the New York City Police Department.**

The contractor will tow the Safekeeping and Forfeiture vehicles from Department facilities throughout the City and transport them to their storage facility. The contractor will tow Ro-Tow vehicles from an NYPD auto pound facility.

In 2007 the property Clerk Division maintained the following inventory:

| | <u>Intake</u> | <u>/release</u> |
|------------------------------|---------------|-----------------|
| Rotation-Tow | 2212 | /2292 |
| Safekeeping | 1741 | /1653 |
| Parking Enforcement Division | 1645 | /1653 |
| Forfeiture | 3406 | /3103 |
| Total Vehicles | 9004 | /8683 |

Additionally, the contractor will be required to immediately transport approximately 4,000 vehicles in the above categories that are currently held at the four NYPD auto pounds. In Attachment C, this is represented as Item 1. The four NYPD Auto Pound locations are:

1. College Point Auto Pound
129-05 31st Avenue
College Point, NY 11354

2. Erie Basin Auto Pound
700 Columbia Street
Brooklyn, NY 11231
3. Gowanus Auto Pound
2nd Avenue and 29th Street
Brooklyn, NY 11232
4. South Brooklyn Marine Terminal Auto Pound
9 29th Street (between 1st and 2nd Avenue)
Brooklyn, NY 1123

After the initial tow of the approximately 4,000 vehicles currently in storage at the above locations, the Contractor will be responsible for towing all other non-evidentiary vehicles ceased during the term of the agreement. It is anticipated that there are approximately 5,000 vehicles stored and processed on any given day during the contract term. **In Attachment C, this is represented as Item 2.**

D. Inventory Assumptions

Below is the inventory as of August 28, 2008, for the following categories: Rotation Tow, Safekeeping, Forfeiture, and Parking Enforcement Division vehicles.

Rotation Tow - 341
Forfeiture - 3353
Safekeeping - 81
Parking Enforcement -138
Total - 3,913

Note: Future Department policy may reduce the number of vehicles held for forfeiture. This policy should not affect the current need to store the 3,353 forfeiture vehicles described above, but may reduce future intake numbers.

E. Assumptions and Requirements

1. Licenses/Permits

- a. The contractor will possess all required government licenses and/or permits for conducting its business and the work required in this procurement for the operation of a storage facility. Contractors shall identify such required licenses and permits and include copies with its proposal.

2. Facilities

- a. The Contractor will have a secure location or locations within 45 linear miles from any of the contiguous boundaries of New York City, capable of storing up to 5,000 vehicles at one time.
- b. The contractor will be able to process up to 9,000 vehicles per year (tow, store, auction, etc.).
- c. The facility will have all towing fees, storage fees, and the procedure for vehicle retrieval posted in a conspicuous place, clearly visible to the public in all storage facilities.

3. Operations

- a. The contractor will have a computer system in place to allow the NYPD Property Clerk to electronically monitor the storage and disposition of vehicles. The Contractor shall not include any Contractor Induced Inhibiting Code (or VIIC) or any other inhibitor on reports and data submitted and provided to the City under this Agreement. VIIC is defined as any deliberately included application or system code that shall degrade performance, result in inaccurate data, deny accessibility, or adversely effect, in any way, programs or data or use of the system.
- b. The contractor will digitally photograph all vehicles when they enter and leave the facility. A minimum of 3 photos per vehicle shall be taken in accordance with NYPD guidelines.
- c. The contractor will maintain an office adjacent to its storage facility to enable legal owners of vehicles to retrieve their vehicles. This office will be open to the public Monday-Friday from 8AM to 8PM so that owners may retrieve their vehicles. The contractor will be provided by the City with written procedures for releasing the vehicles in storage.
- d. The NYPD shall conduct unannounced inspections of any and all facilities 24 hours a day, seven days per week, 365 days per year. The contractor will allow the NYPD to monitor all administrative functions associated with NYPD vehicles taken into their custody.
- e. The contractor will be available 24 hours a day, seven days a week, 365 days per year, to respond to calls for service.
- f. The contractor will be able to tow/store heavy-duty equipment/trucks.
- g. The contractor will be able to tow multiple vehicles from a single location at one time. Vehicles categorized as Ro-tow will be stored at a central location while awaiting pick-up by the contractor. Preference will be given to contractors who can demonstrate an economical approach to towing multiple vehicles

- h. The contractor will meet all the security requirements stated herein for its storage location.
 - i. The NYPD will issue a release notice to the contractor that will then allow it to salvage/auction each vehicle. Only vehicles with this NYPD release will be able to be auctioned or salvaged.
 - j. Upon notification from the NYPD that a vehicle is to be picked up, the contractor will record:
 - a. The time the request was received.
 - b. The time a tow unit is assigned.
 - c. The location of tow request.
 - d. The time the tow unit is on scene.
 - e. The time vehicle arrives at storage facility.
 - f. The total mileage of tow.
 - k. Once the contractor is notified for a request for service, it will have twenty four (24) hours to respond and remove the vehicle from one of the central sites listed in §III.C., above.
 - l. The contractor will accept cash and money orders as payments for auction or salvage. Any other form of payment will be accepted upon approval by the NYPD. The NYPD does not currently accept credit card payments. The contractor may indicate its plan to utilize credit card payments. However, if credit card payment is accepted by the contractor, the contractor will bear the burden of risk for returns and credit card charge cancellations.
4. **Claims**
- a. The contractor will search each vehicle upon its entrance to the storage facility. Any property/contraband found in a vehicle will not be disturbed and the auto will be secured. Contraband is defined as any property that is not legal to possess or that can be used for evidentiary purposes. When in doubt, the contractor will be responsible for notifying the NYPD. The discovery of contraband will be immediately reported to the Department facility from which the vehicle was picked up. A secure area will be designated for the vehicles that are awaiting pick-up by the NYPD.
 - b. The contractor agrees to hold the City of New York and the New York City Police Department harmless of any and all theft or property damage of vehicles in the contractor's storage lot.
 - c. The contractor agrees to absorb all costs assessed against the City of New York and the New York City Police Department related to the theft of or from vehicles from the contractor's storage lot and/or property damage associated with vehicles as a result towing, storing, and releasing vehicles.

5. Auction/Salvage

- a. The contractor or its subcontractor will auction/salvage vehicles in accordance with all applicable local, state, and federal laws, rules, and regulations in which the facility is located.
- b. The contractor will conduct all auctions/salvages in a legal and professional manner.
- c. The contractor will prepare all necessary documentation, including but not limited to documentation necessary to convey title to the auction/salvage vehicle.
- d. The contractor will collect all the proceeds on the day of the auction/salvage and secure all funds in a safe manner. The Contractor shall be responsible for how such proceeds are managed on a day to day basis. The Contractor shall also be fully accountable for all proceeds collected and will be audited for this purpose. If the contractor decides to allow buyers to pay part of the vehicle fee at a later date, the contractor will assume all responsibility for monies collected and shall be liable for any loss or stolen monies. The contractor shall propose how it will handle financial matters related to the sales of the vehicles and the payment of commissions for such sales back to the City of New York.
- e. Autos that are auctioned but have no buyers may be re-auctioned at the contractor's expense or may be salvaged in accordance with this procedure. The Department will not be responsible for storage fees of vehicles that are released for auction, not sold, and then not salvaged but instead held to be re-auctioned.
- f. The contractor will collect all sales tax required at the facility's jurisdiction on vehicles and remit to the proper tax collection agency. Once per month the contractor shall submit to the NYPD project manager proof of all sales taxes collected as well as copies of the reports submitted to the proper tax collection agency.
- g. The contractor will provide a full accounting to the NYPD Property Clerk Division. A report will be submitted by the next business day after the auction/salvage detailing the Vehicle Identification Number (VIN), make, model, invoice number, and sale price of sold vehicles along with the name, address, and identification of the purchaser, as well as taxes charged and collected.
- h. The contractor will remit the auction/salvage proceeds to the City based on the agreed percentage as specified in this RFP (Attachment C-price proposal) by the next business day after the auction/salvage. Contractors shall indicate in its proposal how often it will conduct auctions/salvages and fully describe the methodology and timeline for such auctions/salvages.

6. Personnel

- a. The contractor's employees will act courteously, responsively, and responsibly toward each rightful owner or agent of each vehicle towed, stored, and released.

- b. The contractor's employees will cooperate with all NYPD personnel in any matters related to the storage of vehicles when requested to do so.
- c. The contractor's employees will ensure that no part or property is removed from any vehicle that is towed or stored by the contractor. If any contraband is found by the contractor and its employees, or the subcontractor and its employees, the contractor must notify the NYPD immediately. The NYPD reserves the right to conduct a legal search of any and all vehicles stored by the contractor.
- d. The contractor will allow access to all driver-qualification files as required under the provisions of the Commercial Drivers License statute. The contractor will also provide a detailed listing of all training received by each driver and a summary of the driver's experience with both the contractor and with previous employers.

7. Security

Perimeter Fencing

- a. Each storage lot perimeter will be enclosed by a security fence or wall and will be kept free of weeds, rubbish, or other material capable of offering concealment or assistance to an intruder attempting to breach the barrier.
- b. The perimeter fence will completely enclose the area where NYPD-invoiced vehicles are secured.

Lighting

- a. The area and structure within the property's general boundaries will be well lit.
- b. The lighting around the perimeter of a location should be uniform.
- c. Light fixtures will be maintained, re-lamped, and cleaned when necessary.
- d. Lighting units will be placed at outdoor storage spaces to provide an adequate distribution of light in aisles, passageways, and recesses to eliminate shadowed areas.

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

The contract resulting from this Request for Proposals will be subject to Local Law 129 of 2005, the Minority-Owned and Women-Owned Business Enterprise (M/WBE) program. Please refer to Attachment **D, Schedule B** for information on the M/WBE requirements established for this solicitation and instructions on how to complete the required forms.

Note: As fully explained in the Notice to Prospective Contractors -- part of Attachment **D, Schedule B -- if you are planning to file a waiver of the Target Subcontracting Percentage, the waiver must be submitted to the Agency at least seven days prior to the proposal due date and time in order to be timely considered.**

G. Compliance with Local Law 34 of 2007

Pursuant to Local Law 34 of 2007, 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 the Local Law. In order for the City to obtain necessary information to establish the required database, contractors responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this *proposal*, and should do so in a separate envelope. (If the responding contractor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a contractor has failed to submit a Data Form or has submitted a Data Form that is not complete, the contractor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the *proposal submission* is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the contractor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

H. Performance Bond and Insurance

Within 10 days of the Notice of Recommendation of Contract Award by the NYPD, the Contractor shall be responsible for providing the Performance Bond and Insurance Requirements as stated in **Appendix A, Schedule A (and General Conditions)**.

I. Acceptance of City of New York Terms and Conditions

Appendix A, the Schedule A, and Section VI below contain the City of New York's legal terms and conditions for the proposed contract. The final contract will substantially contain all of these terms and conditions. Proposers who cannot meet all or some of the terms and conditions must state so in their proposal, being specific as possible. This means you should have your legal representative's review the terms before submission of the proposal.

SECTION IV - FORMAT AND CONTENT OF THE PROPOSAL

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

A. Proposal Format

1. Proposal Cover Letter

The Proposal Cover Letter form (Attachment A) transmits the proposer's Proposal Package to the Agency. It should be completed, signed and dated by an authorized representative of the proposer.

2. Technical Proposal

The Technical Proposal is a clear, concise narrative that addresses the following:

a. Experience

Describe the successful relevant experience of the proposer, each proposed sub-contractor if any, and the proposed key staff in providing the work described in Section III and Appendix B of this RFP. Specifically address the following: **Experience in the field of vehicle towing, storage, salvage, and auctioning.**

In addition:

Attach a listing of at least two relevant references, describing work similar to that required in this RFP, including:

1. The name of the reference entity,
2. A brief statement describing the relationship between the proposer or proposed sub-contractor, as applicable, and the reference entity, and
3. The name, title and telephone number of a contact person at the reference entity.

Attach for each key staff position a resume and/or description of the qualifications that will be required. (In addition, provide a statement certifying that the proposed key staff will be available for the duration of the project.)

b. Organizational Capability

Demonstrate the proposer's organizational capability (technical, managerial, and financial) to provide the work described in Section III.

In addition:

Attach a chart showing where, or an explanation of how, the proposed services will fit into the proposer's organization.

Attach a copy of the proposer's latest audit report or certified financial statement, or a statement as to why no report or statement is available.

Provide a list of all subcontractors that will be included as part of your proposal team.

Provide your acknowledgment of the legal terms and conditions of this solicitation as further described in Section III. I. Acceptance of City of New York Terms and Conditions.

c. Proposed Approach

Describe in detail how the proposer will provide the work described in Section III of this RFP and demonstrate that the proposer's proposed approach will fulfill the Department's goals and objectives. Specifically address how the vehicles will be towed, secured, released to owner, salvaged, and auctioned, as well as towing response times.

The Department's assumptions regarding contractor approach represent what the Agency believes to be most likely to achieve its goals and objectives. Proposers are encouraged to propose an approach that they believe will most likely achieve the Department's goals and objectives. Proposers may also propose more than one approach. If an alternative approach affects other areas of the proposal, however, such as experience, organizational capability, or price, that alternative approach should be submitted as a complete and separate proposal providing all the information specified in Section IV of this RFP.

3. Price Proposal

Proposers are encouraged to propose innovative payment structures. The Agency reserves the right to select any payment structure that is in the City's best interest. For the purposes of comparison, proposers should submit a Price Proposal that meets the standards of Sections IV(3)(a), below.

a. Proposed Pricing

The Price Proposal should include the following for providing the work described in Section III of this RFP:

The proposed fees, rates, and percentage of collections in the format prescribed in the Price Proposal "Attachment C."

4. Acknowledgment of Addenda

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

5. **Other Documents VENDEX Questionnaires, Department of Business Services/Division of Labor Services Employment Report, Prevailing Wage Schedule(s) and/or Tax Affirmation Form and the Doing Business form. These forms should be submitted with the proposal in a separate envelope with a label that contains the PIN and the words "CITY FORMS."**

B. Proposal Package Contents ("Checklist")

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

1. A sealed inner envelope labeled "Program Proposal," containing **one (1) original set and SEVEN (7) of duplicate sets** of the documents listed below in the following order:
 - 1) Proposal Cover Letter Form (Attachment A).
 - 2) A copy of all licenses, certificates, and other applicable and lawful documents showing that your firm meets the minimum requirements set forth above in §II.D.- which includes: a) a copy of the license to tow vehicles inside NYC and any locality through which the vehicle and tow may travel through and finally reside; and b) the license to store, salvage, and auction vehicles in the State and locality in which the facilities are located. **NOTE: These are minimum qualifications. These documents are required at the time of proposal submission. Your proposal will be deemed non-responsive if you fail to provide these documents with your proposal.**
 - 3) A list of all Subcontractors and, if applicable, any proposed subcontractor agreements with such firms.
 - 4) Technical Proposal in accordance with Section IV.
 - a. Narrative
 - b. References for the Proposer and, if applicable, each Sub-Contractor
 - c. Resumes and/or Description of Qualifications for Key Staff Positions
 - d. Organizational Chart
 - e. Audit Report or Certified Financial Statement or a statement as to why no report or statement is available
 - 5) Acknowledgment of Addenda Form (Attachment B)
2. A separate sealed inner envelope labeled "Price Proposal" containing **one (1) original set and SEVEN (7) Duplicate sets** of the Price Proposal.
 - Price Proposal Form (Attachment C)
3. All proposals must contain a third sealed inner envelope labeled "Doing Business Data Form" containing an original, completed Doing Business Data Form (see Attachment E).

4. A sealed outer envelope, enclosing the three sealed inner envelopes. The sealed outer envelope should have two labels containing:
 - The proposer's name and address, the Title and PIN # of this RFP, and the name and telephone number of the Proposer's Contact Person.
 - The name, title, and address of the Authorized Agency Contact Person.

SECTION V - PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. Evaluation Procedures

All proposals accepted by the Agency will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the Agency to be non-responsive will be rejected. The Agency's Evaluation Committee will evaluate and rate all remaining proposals based on the Evaluation Criteria prescribed below. The Agency reserves the right to conduct site visits and/or interviews and/or to request that proposers make presentations and/or demonstrations, as the Agency deems applicable and appropriate. Although discussions may be conducted with proposers submitting acceptable proposals, the Agency reserves the right to award contracts on the basis of initial proposals received, without discussions; therefore, the proposer's initial proposal should contain its best program/technique and price terms.

B. Evaluation Criteria [MOC APPROVAL REQUIRED IF % DISTRIBUTION DIFFERS]

- Demonstrated quantity and quality of successful relevant experience.
50%
- Demonstrated level of organizational capability.
10%
- Quality of proposed approach.
40%

C. Basis for Contract Award

A contract will be awarded to the responsible proposer whose proposal is determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria that are set forth in this RFP. Contract award shall be subject to the timely completion of contract negotiations between the Department and the selected proposer. In evaluating the proposals, the NYPD will consider only price and the criteria set forth in the RFP. Price will be considered as follows: Based on the final technical scores of the proposals (after any oral presentations, discussions and/or technical Best and Final Offers, if applicable, have been held) the NYPD will establish a shortlist – either through a natural break in scores or a technically viable cutoff score. After this is done, for those proposals still under consideration for award, the NYPD will recommend for contract award the proposal that has the lowest price per technical point (PPTP). The lowest PPTP will be calculated by dividing the proposal price (or Best and Final Offer, if applicable) by the final technical score.

SECTION VI - GENERAL INFORMATION TO PROPOSERS

A. Complaints. The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

B. Applicable Laws. This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.

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

D. Contract Award. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

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

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

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

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

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

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

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

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

M. Legal Contract.

The proposer affirms and declares:

a. The said proposer is of lawful age and the only one interested in this solicitation; and that no person, firm or corporation other than here-in-above named has any interest in this solicitation, or in the Contract proposed to be taken.
b. By submission of this application, each proposer and each person signing on behalf of any proposer organization certifies, and in the case of a joint application, each party thereto certifies as to its own organization under penalty of perjury, that to the best of knowledge and belief:

(i) The prices in this application have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor or potential competitor;

(ii) Unless otherwise required by law, the prices which have been quoted in this application have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer directly or indirectly to any other proposer or to any competitor or potential competitor, and;

(iii) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit an application for the purpose of restricting competition.

(iv) That no councilman or other officer or employee or person whose salary is payable in whole or in part from the City Treasury is directly or indirectly interested in this application/solicitation, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits.

The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.



(Commissioner) (Agency Chief Contracting Officer)

January 30, 2009

Date

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

ATTACHMENT A

PROPOSAL COVER LETTER

RFP TITLE: _Invoiced Auto Towing, Storage, Auctioning and Salvaging Services

PIN #:056090000629

Proposer:

Name: _____

Address: _____

Tax Identification #: _____

Proposer's Contact Person:

Name: _____

Title: _____

Telephone #: _____

Certification of Compliance with Minimum Qualification Requirement(s)

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____

Date: _____

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

☐ Yes ☐ No

**THE CITY OF NEW YORK
POLICE DEPARTMENT**

**APPENDIX A
SUPPLY AND SERVICE
TERMS AND CONDITIONS FOR SERVICE PROPOSALS**

ARTICLE 1 - THE CONTRACT

This Agreement is subject to the rules of the Procurement Policy Board of the City of New York. In the event of a conflict between said Rules and a provision of this Invitation For Proposals, the Rules shall take precedence.

Except for titles, subtitles, headings, running headlines, tables of contents and indices (all of which are printed herein merely for convenience) the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this contract:

1. The Advertisement and Information for Vendors, or Proposal for bids.
2. The Proposal.
3. The Agreement.
4. The Annexed Resolution of the Board of Estimate, Budget Director's Certificate, or Mayor's Certificate.
5. General Conditions, or General Provisions.
6. The Specifications.
7. The Contract Drawings.
8. All Addenda issued by the Commissioner prior to the receipt of Proposals.
9. All provisions required by law to be inserted in this contract, whether actually inserted or not.
10. The Notice of Award.
11. Performance and Payment Bonds.
12. Notice to Proceed with Work.

ARTICLE 2 - DEFINITIONS

The following words and expressions, or pronouns used instead, shall, wherever they appear in this contract, be construed as follows, unless a different meaning is clear from the context:

1. "ADDENDUM" or "ADDENDA" shall mean the additional contract provisions issued in writing by the Commissioner prior to the receipt of Proposals.
2. "AGENCY" shall mean a city, county, borough or other office, position, department, division, bureau, board or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.
3. "CITY" shall mean the City of New York, party of the first part.
4. "COMMISSIONER (or AGENCY HEAD)" shall mean the Police Commissioner of the City of New York, or his duly authorized representative designated in writing by the Commissioner.
5. "COMPTROLLER" shall mean the Comptroller of the City of New York.
6. "CONTRACT" or "CONTRACT DOCUMENTS" shall mean each of the various parts of the contract referred to in Article 1 hereof, both as a whole and severally.

7. "CONTRACTOR" shall mean the party of the second part hereto, whether corporation, firm or individual, or any combination thereof, and its, their or his successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in the place of the party of the second part under this contract.
8. "CONTRACT DRAWINGS" shall mean only those drawings specifically entitled as such and listed in the specifications or in any addendum, or any detailed drawings furnished by the Commissioner, pertaining or supplemental thereto.
9. "CONTRACT WORK" shall mean everything required to be furnished and done by the Contractor by any one or more of the parts of the contract referred to in Article 1 hereof, except extra work as hereinafter defined; it being understood that, in case of any inconsistency in or between any part or parts of this contract, the Project Manager shall determine which shall prevail.
10. "DEPARTMENT" shall mean the New York City Police Department acting by and through the Commissioner thereof, or his duly authorized representative.
11. "EXTRA WORK" shall mean work other than that required by the contract at the time of its execution.
12. "FINAL ACCEPTANCE" shall mean final acceptance of the work by the Commissioner as evidenced by his signature upon his certificate of completion and acceptance filed in the Office of the Comptroller, copy of which shall be sent to the Contractor. Such acceptance shall be deemed to have taken place as the date so stated in such certificate.
13. "LAW" or "LAWS" shall mean the Constitution of the State of New York, the New York City Charter, the New York City Administrative Code, a statute of the United States or of the State of New York, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.
14. "MATERIALMAN" shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor, or any subcontractor to fabricate or deliver, or who actually fabricates or delivers, plant, materials or equipment to be incorporated in the work.
15. "OTHER CONTRACTORS" shall mean any Contractor (other than the party of the second part or his subcontractors) who has a contract with the City for work on or adjacent to the building or sites of the work.
16. "PROJECT" shall mean the public improvement to which this contract relates.
17. "PROJECT MANAGER" shall mean the representative of the Commissioner duly designated by him to be his representative at the site of work.
18. "REQUIRED QUANTITY" in a unit price contract shall mean the actual quantity of any item of work or materials which is required to be performed or furnished in order to comply with the contract.
19. "SITE" shall mean the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by the Project Manager.
20. "SPECIFICATIONS" shall mean all of the directions, requirements and standards of performance applying to the work as hereinafter detailed and designated under specifications.
21. "SUBCONTRACTOR" shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the site.
22. "TREASURER" shall mean the Finance Administrator of the City of New York.

23. "THE WORK" shall mean everything required to be furnished and done by the Contractor under the contract, and shall include both contract work and extra work.
24. "PROCUREMENT POLICY BOARD" (PPB)- The Procurement Policy Board is a permanent agency of the City of New York whose functions are to establish comprehensive and consistent procurement policies and rules which shall have broad application throughout the City.
25. "CITY CHIEF PROCUREMENT OFFICER (CCPO)"- Position delegated authority by the Mayor to coordinate and oversee the procurement activity of mayoral agency staff, including the ACCO and any offices which have oversight responsibility for the procurement of construction.
26. "AGENCY CHIEF CONTRACTING OFFICER (ACCO)" - Position delegated by authority of the Agency Head to organize and supervise the procurement activity of subordinate agency staff in conjunction with the CCPO.
27. "REQUIREMENT CONTRACT" shall mean that the Commissioner will order (if applicable and so designated), during the term of this Contract, all services and supplies that may be needed, if any, by any or all NYPD-Bureaus regardless of the estimated quantities in this Contract. The Commissioner may, with the consent of the Contractor, extend the term of this Contract if so stated in the Specifications.

ARTICLE 3 - CHARACTER OF THE WORK

Unless otherwise expressly provided in the Contract Drawings, Specifications and Addenda, the work must be performed in accordance with the best modern practice, with materials and workmanship of the highest quality, to the satisfaction of the Commissioner.

3.1 RIGHT TO KNOW

Where applicable, as per the NYS "Right to Know" law and the Federal OSHA Hazard Communication standard 29 CER 1200., Contractors providing services to the NYPD are required to submit appropriate Manufactures Safety Data Sheets (MSDS) when using chemically based substances on NYPD premises. Failure to provide the relevant MSDS may cause contract to be deemed informal and thus unacceptable for award or, if work is already in progress, may result in the termination of your contract (with applicable penalties).

If any of your Vendors or Contractors have any questions regarding this regulation, they may contact the authority listed below for clarification:

BUREAU OF TOXIC SUBSTANCE ASSESSMENT
New York State Health Department
Tower Building, Empire State Plaza
Albany, New York 12237
(518)473-3793

ARTICLE 4- PERIOD OF PERFORMANCE AND THE PROVISIONS

4.1 The period of performance of this contract shall be as shown in Specifications of this Contract, Schedule A, commencing on the date shown in the NYPD's order to commence work letter.

4.2 PROCESS SCHEDULE - To enable the work to be laid out and prosecuted in an orderly and expeditious manner the Contractor, within 10 days after the award of this contract, unless otherwise directed by the Project Manager, shall submit to him a proposed progress schedule as called for in the Specifications of this Contract showing:

(a) The anticipated time of commencement and completion of each of the various operations to be performed under this contract; and

(b) The sequence and interrelationship of each of these operations with the others and with those of other related contracts; and

(c) The estimated time required for fabrication or delivery, or both, or all materials and equipment required for the work.

The proposed schedule shall be revised as directed by the Project Manager, until finally approved by him, and after such approval, shall, subject to the provisions of this Article, be strictly adhered to by the Contractor.

If the Contractor shall fail to adhere to the approved progress schedule, or to the schedule as revised in accordance with this Article, he must promptly adopt such other or additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.

4.3 REQUEST FOR INFORMATION OF APPROVAL - From time to time as the work progresses and in the sequence indicated by the approved progress schedule, the Contractor must submit to the Project Manager a specific request in writing for each item of information or approval required by him. These requests must state the latest date upon which the information or approval is actually required by the Contractor, and must be submitted sufficiently in advance thereof to allow the Project Manager a reasonable time to act upon such submissions or any necessary re-submissions thereof.

The Contractor shall not have any right to an extension of time on account of delays due to his failure to submit his requests for the required information or the required approval in accordance with the above requirements.

4.4 NOTICE OF CONDITIONS CAUSING DELAY - Within five days after the commencement of any condition which is causing or may cause delay in completion, including conditions for which the Contractor may be entitled to an extension of time, the Contractor must notify the Project Manager in writing of the effect, if any, of such condition upon the previously approved progress schedule, and must state why and in what respects, if any, the condition is causing or may cause such delay.

Failure strictly to comply with this requirement may, in the discretion of the Commissioner, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from such change, extra work, suspension, or other condition. Such failure shall also constitute a waiver, by the Contractor, of any and all claims for damages for delay arising therefrom.

If and when appropriate, the progress schedule shall be revised by the Contractor as and when directed by the Project Manager, and when approved by the Project Manager, the revised schedule must be strictly adhered to by the Contractor.

4.5 COORDINATION WITH OTHER CONTRACTORS - During the progress of the work, other Contractors may be engaged in performing other work in the project area. In that event the Contractor shall coordinate the work to be done hereunder with the work of such other Contractors in such manner as the Project Manager may direct.

If the Project Manager shall determine that the Contractor is failing to coordinate his work with the work of other Contractors as the Project Manager has directed:

A. The Commissioner shall have the right to withhold any payments otherwise due hereunder until the Project Manager's directions are complied with by the Contractor, and

B. The Contractor shall indemnify and hold the City harmless from any and all claims or judgments for damages and from costs and expenses to which the City may be subjected or which it may suffer or incur by reason of the Contractor's failure to comply with the Project Manager's directions promptly; and

C. The Comptroller shall have the right to exercise the powers reserved in Article 5 hereof with respect to any claims which may be made for damages due to this Contractor's failure to comply with the Project Manager's direction promptly.

If the Contractor notifies the Project Manager in writing that another Contractor on this project is failing to coordinate his work with the work of his contract as directed, the Project Manager must promptly issue such directions to the other Contractor with respect thereto as the situation may require. The City shall not, however, be liable for any damages suffered by this Contractor by reason of the other Contractor's failure to promptly comply with the directions so issued by the Project Manager, or by reason of another Contractor's default in performance, it being understood that the City does not guarantee the responsibility or continued efficiency of any Contractor.

Should the Contractor sustain any damage through any act or omission of any other Contractor having a contract with the City for the performance of work upon the site or of work which may be necessary to be performed for the proper prosecution of the work to be performed hereunder or through any act of omission of a subcontractor of such contract, the Contractor shall have no claim against the city for such damage, but shall have a right to recover such damage from the other Contractor under the provision similar to the following provisions which have been or will be inserted in the contracts with such other contractors.

Should any other contractor having or who shall hereafter have a contract with the City for the performance of work upon the site sustain any damage through any act of omission of the Contractor hereunder or through any act or omission of any subcontractor of the Contractor, the Contractor agrees to reimburse such other contractor for all such damage and the indemnify and hold the City harmless from all such claims.

ARTICLE 5 - PAYMENT

The Prompt Payment provisions set forth in Chapter 5, Section 5-07, of the Procurement Policy Board Rules in effect at the time of this solicitation will be applicable to payments made under this contract. The provisions require the payment to contractors of interest on payments made after the required payment date except as set forth in subdivisions c(3) and d(2), (3), (4) and (5) of Section 5-07 of the Rules.

The contractor must submit a proper invoice to receive payment, except where the contract provides that the contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

Determinations of interest will be made in accordance with the provisions of Section 5-07 of the Procurement Policy Board Rules and General Municipal Law (Section 3-a).

If the contractor is paid interest, the proportionate share of that interest shall be forwarded by the contractor to its subcontractor(s).

The contractor shall pay each subcontractor (including a materials supplier) not later than seven (7) days after receipt of payment out of amounts paid to the contractor by the City for work performed by the subcontractor or supplier under this contract.

The contractor shall include in each of its subcontracts a provision requiring each subcontractor to make payment to each of its lower-tier subcontractors or suppliers for work performed under this contract in the same manner and within the same time period set forth above.

ARTICLE 5a. AWARDED PRICE

For the Contractor's complete performance of the work, the City will pay, and the Contractor agrees to accept, subject to the terms and conditions hereof, the lump sum price or unit prices at which this Contract was awarded, plus the amount required to be paid for any extra work ordered by the Commissioner under Article 17 hereof, less credit for any work omitted pursuant to this Agreement.

ARTICLE 5b. SUBMISSION OF REQUESTS FOR PAYMENT

If this contract allows for partial payments for lump sum work or unit price, the Contractor shall submit a maximum of one request for payment per month (30 day period). Requests for payments in excess of one per month

will be returned to the contractor; such invoices will not be subject to the Prompt Payment conditions of 37 of the Information For Vendors.

5b.1 The City agrees to pay and the Contractor agrees to accept, as full consideration for the complete and satisfactory performance of the services required herein, the amount set forth in his Proposal.

5b.2 The Contractor shall submit numbered invoices for payment in accordance with the payment schedule established in the Specifications of this Contract. Such invoices shall set forth the services for which payment is requested, and approval thereof of the Department shall be a prerequisite to payment. All payments shall be subject to such provisions for set off as may be set forth in this Agreement and in the Specifications attached hereto.

5b.3 Payments shall be made out of such moneys as may be reserved by the Comptroller of the City of New York for the purpose herein provided.

5b.4 The contract and all payments hereunder shall be subject to audit by the NYPD and post audit by the Comptroller of the City in accordance with the New York City Charter and Administrative Code.

5b.5 The City of New York is exempt from the payment of any Federal, State and City sales or excise taxes. The Contractors attention is directed to Addendum No.1 attached hereto and made a part hereof, which more fully explains this exemption.

ARTICLE 6- INSURANCE, LIQUIDATED DAMAGES, MAINTENANCE AND GUARANTY

6.1 INSURANCE

During performance and up to the date of final acceptance, the Contractor must effect and maintain insurance of the kind and at the limits set forth in the General Conditions, Schedule "A".

6.2 LIQUIDATED DAMAGES

In case the Contractor shall fail to complete the work within the time fixed for such completion in the General Conditions, Schedule "A", or within the time to which such completion may have been extended, the Contractor must pay to the City the sum fixed in the General Conditions, Schedule "A", for each and every calendar day that the time consumed in completing the work exceeds the time allowed therefore; which said sum, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reason of delay in the completion of the work hereunder is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such delay, and not as a penalty.

Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification under this Agreement, or the Contractor's obligation to indemnify the City, or to any other remedy provided for by contract or by law.

The Comptroller will deduct and retain out of the moneys which may become due hereunder, the amount of such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, the Contractor shall be liable to pay the difference upon demand by the Comptroller.

6.3 MAINTENANCE AND GUARANTY

The Contractor must promptly repair, replace, restore or rebuild, as the Commissioner may determine, any finished work in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one year period subsequent to the date of final acceptance, except where other periods of maintenance and guarantee are provided for.

As security for the faithful performance by the Contractor of his obligations hereunder, the Comptroller shall retain from the final payment hereunder the sum fixed in the Specifications. If the Contractor has faithfully performed all his obligations hereunder the Commissioner shall so certify to the Comptroller within five (5) days after the expiration of one (1) year from the date of completion and acceptance of the work or within five (5) days after the expiration of the guarantee period fixed in the specifications. The sum shall be repaid to the Contractor without interest within thirty (30) days after certification by the Commissioner to the Comptroller that the Contractor has faithfully performed all his obligations hereunder.

Notice by the Commissioner to the Contractor to repair, replace, rebuild or restore such defective or damaged work shall be timely if given no later than ten (10) days subsequent to the expiration of the one (1) year period or other periods provided for herein.

If the Contractor shall fail to repair, replace, rebuild or restore such defective or damaged work promptly after having receiving such notice the Commissioner shall have the right to have the work done by others in the same manner as is provided for the completion of a defaulted contract, under Article 13 hereof and to deduct the cost thereof from the amount retained hereunder. The balance, if any, shall be returned to the Contractor without interest.

If the amount so retained be insufficient to cover the cost of such work, the Contractor shall be liable to pay such deficiency on demand by the Comptroller.

The Project Manager's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective work when performed by one other than the Contractor shall be binding and conclusive as to the amount thereof upon the Contractor.

The Contractor shall obtain all manufacturer's warranties and guaranties of all equipment and materials required by this Contract in the name of the City of New York and shall deliver same to the City.

6.4 RETAINED PERCENTAGE - IF SO STATED IN SCHEDULE A

A. As further security for the faithful performance of this contract, the Commissioner shall deduct, and retain, until the substantial completion of the work, a percent, as indicated in the Schedule A, General Conditions, of this contract, the value of work certified for payment in each partial payment voucher. In case of a unit price contract a percent, as indicated in the Schedule A, of the estimated amount to be paid to the Contractor under the Contract.

B. However, in contracts where full performance and payment bonds are not furnished as further security for the faithful performance of this contract, the Commissioner shall deduct, and retain until the substantial completion of the work, ten (10) percent of the value of work certified for payment in each partial payment voucher, or, in case of a unit price contract, ten (10) percent of the estimated amount to be paid to the Contractor under the contract.

ARTICLE 7 - LIABILITY OF CONTRACTOR

7.1 GENERAL LIABILITY

A. The Contractor shall be solely responsible for all physical injuries or death to its agents, servants, or employees or to any other person and for all damage to any property sustained during its operations and work under this Agreement resulting from any act of omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors, and shall hold harmless and indemnify the City from liability upon any and all claims for damages including those on account of such injuries or death to any such person or damages to property on account of neglect, fault or default of the Contractor, its officers, trustees, employees, agents, servants, or independent contractors. The Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the negligence, fault or default of the Contractor or not.

B. In the event that any claim is made or any action is brought against the City arising out of negligence or careless acts of an employee of the Contractor either within or without the scope of his employment, or arising out of Contractor's negligent performance of this Agreement, or any act included in paragraph A above then the City shall have the right to withhold further payments hereunder for the purpose of setoff in sufficient sums to cover the said claim or action. The rights and remedies of the City provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

7.2 PROTECTION OF CITY PROPERTY

A. The Contractor assumes the risk of, and shall be responsible for any loss or damage to City property including property and equipment leased by the City, used in the performance of this Agreement, and caused, either directly or indirectly, by the acts, conduct, omissions or lack of good faith of the Contractor, its officers, managerial personnel employees, or any person, firm, company, agent or other engaged by the Contractor as expert, consultant, specialist or subcontractor hereunder.

B. In the event that any such City property is lost or damaged except for normal wear and tear, or to the extent that such property is consumed in the performance of this Agreement then the City shall have the right to withhold further payments hereunder for the purpose of setoff in sufficient sums to cover such loss or damage.

C. The Contractor agrees to indemnify the City and hold it harmless from any and all liability or claim for damages due to any such loss or damage to any such City property described in subsection A above.

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

7.3 INFRINGEMENTS

The Contractor shall be liable to the Department and hereby agrees to indemnify and hold the Department harmless for any damage or loss or expense sustained by the department from any infringement by the Contractor of any copyright, trademark or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by the Contractor in the performance of this Agreement.

ARTICLE 8- PROVISIONS RELATING TO LABOR

8.1 REQUIRED CONTRACT LANGUAGE EO. 50 RIDER - EQUAL EMPLOYMENT OPPORTUNITY

This contract is subject to the requirements of New York City Charter Chapter 13-B, subsection 350 et seq. (Chapter 13-B), Executive Order No. 50 (April 25, 1980) (EO. 50) and the Rules (1991) and Regulations (1982) 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 against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other form 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, disability, marital status, sexual orientation or citizenship status;

(3) will state in all solicitations of advertisement for employees placed by or 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 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 Chapter 13-B and EO. 50 and the Rules and Regulations promulgated thereunder;

(5) will furnish before the contract is awarded all information and reports including an Employment Report which are required by Chapter 13-B, EO. 50, the Rules and Regulations promulgated thereunder, and orders of the Director of the Division of Labor Services (DLS). Copies of all required reports are available upon request from the contracting agency; and

(6) will permit DLS to have access to all relevant books, records and accounts by DLS 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 of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and compliance with Chapter 13-B, EO. 50 and Rules and Regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, 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 all or parts of the contract and/or of payments therefor;
- (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 DLS may recommend to the contracting agency head that a board of responsibility constituted pursuant to the Rules and Regulations of the Procurement Policy Board be convened for purposes of declaring a contractor who has repeatedly failed to comply with Chapter 13-B, EO. 50 and the Rules and Regulations promulgated thereunder to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by Chapter 13-B, EO. 50 and Rules and Regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such actions with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance.

The contractor further agrees that it will refrain from entering into any contract or contract modifications subject to Chapter 13-B, EO. 50 and Rules and Regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of EO. 50 and Rules and Regulations promulgated thereunder.

8.2 SUPERVISION BY CONTRACTOR

A. The Contractor shall give its personal supervision to the work or have a competent manager, foreman or supervisor, satisfactory to the Commissioner assigned to the work at all times during performance of the contract, with authority to act for the Contractor.

B. In the performance of the contract hereunder, the Contractor shall utilize competent and qualified persons. All such persons are the employees of the Contractor and not of the City and the Contractor shall be responsible for their acts, personal conduct and work.

C. All services shall be performed in a skillful and workmanlike manner. The Commissioner may require and the Contractor agrees to the removal from the work of any of the Contractor's personnel or its subcontractor's personnel deemed incompetent, careless or otherwise objectionable by the Commissioner.

D. The Department shall have the right to have representatives of the Department or of the City or the State or Federal governments present at the site of the engagement to observe the work being performed.

8.3 PROHIBITED ACTS

The Contractor shall not employ any labor, or utilize materials or means which employment or utilization during the course of this agreement may to in any way tend to cause or result in strikes, work stoppages, delays, suspensions of work or similar troubles by workmen employed by the Contractor, or by any of the trades working in or above the buildings and premises where work is being performed under this agreement, or by Contractors or their subcontractors pursuant to other agreements or contracts, or on any other building or premises owned or operated by the City of New York, its agencies, departments, boards or authorities. Any violation by the Contractor of these requirements should be considered as proper and sufficient cause for declaring the Contractor to be in default.

8.4 NOTICE OF LABOR DISPUTES

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice to the Department, including all relevant information with respect thereto.

8.5 MINIMUM WAGE AND WORKING CONDITIONS

A. Except for those employees whose minimum wage is required to be fixed pursuant to Section 220 d of the Labor Laws of the State of New York, all persons employed by the Contractor and any subcontractor in the manufacture or furnishing of work, labor or services, used in the performance of this contract will be paid not less than the federal minimum wage.

B. No part of the work, labor or services will be performed or rendered by the Contractor in any plants, factories, buildings or surrounding or working under conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this contract. Compliance with the safety, sanitary and factory inspection laws of the state in which the work is to be performed shall be prima facie evidence of compliance with this paragraph.

C. For any break or violation of any of the provisions of paragraphs A and B above, the Contractor shall be liable to the City for liquidated damages, which may be withheld from any amounts due herein or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damages for any other breach of this contract, a sum equal to the amount of any underpayment of wages due to any employee engaged shall have the right to cancel this contract for violation of this clause and enter into other contracts for the completion of this contract, charging any addition cost to the Contractor. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages in violation of the provisions of this clause, shall be held in a special deposit account and shall be paid without interest, on order of the City Commissioner of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

8.6 HOURS AND WAGES

Pursuant to the provisions of Section 220 of the New York State Labor Law:

A. No laborer, workman or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases or extraordinary emergency including fire, flood or danger to life or property. No such person shall be so employed more than eight hours in any day or more than five days in any one week except in such emergency, and unless specific dispensation shall have been granted by the industrial commissioner. Whenever such a dispensation is granted, all work in excess of eight (8) hours per day and five (5) days per week shall be considered overtime work, and the laborers, workmen and mechanics performing such work shall be paid a premium wage commensurate with the premium wages prevailing in the area in which the work is performed.

B. The wages to be paid and the supplements to be provided, for a legal day's work, to laborers, workmen or mechanics employed by the Contractor shall not be less than the prevailing wages and supplement required to be paid to such employees, as ascertained and prescribed by the Comptroller in the Specifications attached hereto.

8.7 MINIMUM WAGES

In accordance with the provisions of Section 343.9.0 of the New York City Administrative Code, as amended:

A. Except for employees whose wage is required to be fixed pursuant to Section 220 of the Labor Law, all persons employed by the Contractor and 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 sum mandated by law.

B. For any breach or violation of the paragraphs on working condition and minimum wages above, the party responsible therefor shall be liable to the City for liquidated damages, which may be withheld from any amounts due on any contracts with the City of such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the City, in addition to damage for any other breach of this Contract, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this Contract. In addition, the Commissioner shall have the right to cancel this Contract and enter into other contracts for the completion of the original Contract, with or without public letting, and the original Contractor shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the Commissioner of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the Contractor of the withholding or recovery of such sums by the City.

C. In the event of any breach or violation of any of the provisions of this Article, and in addition to any other provisions above, pertaining to said breach or violation, no contracts shall be awarded to the Contractor or subcontractor, as the case may be, or to any firm, corporation, partnership or association in which the Contractor or subcontractor has a controlling interest until three years have elapsed from the date of such breach.

D. The Contractor and his Subcontractors shall within ten (10) days after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory building and structure where employees of the Contractor and his Subcontractors engaged in the performance of this Contract are employed, notices furnished by the City, in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Section 343.9.0 of the Administrative Code of the City of New York, and the Contractor and his subcontractors shall continue to keep such notices posted in such

prominent and conspicuous places until final acceptance of the supplies, materials equipment, or work, labor or services required to be furnished or rendered under this Contract.

E. The Contractor and his subcontractors shall keep such employment records as are required in the Rules and Regulations of the Board of Estimate of the City of New York adopted pursuant to the provisions of Section 343.9.0 of the Administrative Code.

F. In all orders or contracts by the Contractor to the subcontractor for; (a) manufacturing or furnishing any of the supplies, material or equipment required under the Contract; (b) furnishing any of the work, labor or services required under the Contract, the Contractor shall insert a notice to the subcontractor to the effect that such supplies, materials, equipment or work, labor or services are for the City of New York and that the subcontractor is subject to the provisions of Section 343.9.0. of the New York City Administrative Code.

G. At the time the Contractor makes application for each partial payment and for final payment, the Contractor shall submit to the Commissioner a written certification of compliance with the prevailing wage, minimum wage and other provisions and stipulation required by Section 220 of the New York State Labor Law and Section 343.9.0 of the Administrative Code of the City of New York and the Rules and Regulations of the Board of Estimate adopted pursuant thereto and any and all supplements and amendments to such rules and regulations. Compliance with the provisions of this paragraph shall be a condition precedent to payment shall be made to the Contractor unless and until each such certification shall have been submitted to and received by the Commissioner.

H. This Contract is executed by the Contractor with the express warranty and representation that the Contractor is not disqualified under the provisions of Section 343.9.0 of the Administrative Code for the award of the Contract.

I. Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this Contract, and ground for cancellation thereof by the City.

NOTE: Sections 8.8 through 8.11 apply to contracts for building service work.

8.8 PREVAILING WAGE AND SUPPLEMENTS (sec. 231 - Labor Law)

A. The wage which the Contractor shall pay for a legal day's work and supplements to be provided to building service employees, as defined in Section 230 of the Labor Law, employed upon the whole or part of the building service work contemplated by this contract, shall not be less than the prevailing rate of wages and any supplements required to be paid to the various classes of employees on such work, ascertained and determined by the Comptroller as set forth in a schedule which is set forth in Section B of Specifications of this Contract of the Proposal for Bid.

B. No later than the first day upon which work on this contract is to commence, the Contractor shall post in a prominent and accessible place on the site of work a legible statement of the wages to be paid to the employees for the building service work contemplated.

C. An apprentice in a craft or trade may be permitted to work at a wage lower than that established for the journeyman in such craft or trade only if all of the following conditions are met:

(1) such apprentice has been individually registered in an apprenticeship program which is duly registered with the New York State Industrial Commissioner in conformity with Article 23 of the Labor Law;

(2) such apprentice's registration occurred prior to his/her employment as an apprentice on such craft or trade service work; and

(3) written proof of such individual registration is submitted to the Agency prior to such apprentice's employment as an apprentice. The proof submitted shall include evidence of the appropriate ratios and apprentice's wage rates. In no event shall the ratio of apprentice to journeyman employed on such service work be greater than the lesser of the following rate:

(a) the ratio permitted in the apprenticeship program approved by the industrial commissioner, or

(b) the ratio prevailing in the locality where the service work will be performed.

8.9 OVERTIME (Sec. 232 - Labor Law)

All building service employees, who work more than eight hours in any one day or more than forty hours in any workweek, shall be paid wages for such overtime by the Contractor, at a rate not less than one-and-one-half times his prevailing basic hourly rate.

8.10 RECORD KEEPING (Sec 233 - Labor Law)

A. The Contractor shall keep original payrolls or transcripts thereof subscribed and confirmed by it as true, under penalties of perjury showing the hours and days worked by each employee, the craft, trade or occupation at which he/she was employed, and the wages paid.

B. Where the wages paid include sums which are not paid directly to the employee weekly and which are expended for supplements, the records shall include the hourly payment on behalf of such employees, the supplement for which such payment has been made, and the name and address of the person to whom such payment has been made. In all cases, the Contractor shall keep a true and inscribed copy of the agreement under which such payments are made, a record of all net payments made thereunder, and a list of all persons for whom such payments are made.

C. The records required herein shall be kept on the site of the work during all of the time that work hereunder is being performed. Upon a formal order of the City, the Contractor shall produce within five (5) days on the site of work, such records subscribed and affirmed by it as true under the penalties of perjury.

8.11 CERTIFICATION OF WAGE AMOUNTS (Sec. 237 - Labor Law)

As a prerequisite to any payment by the City, the Contractor and his subcontractors shall file a statement in writing and in form satisfactory to the Comptroller, certifying to the amounts then due for daily or weekly wages on account of labor performed upon the work hereunder, setting forth therein the names of the persons whose wages are unpaid and the amount due to you on behalf of each respectively, which statement so to be filed shall be certified by the oath of the Contractor or subcontractor, as the case may be that he has read such statement subscribed by him and knows the contents thereof, and that the same is true of his own knowledge.

ARTICLE 9 - BOOKS AND RECORDS

9.1 MAINTENANCE

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

9.2 RETENTION OF RECORDS

The Contractor agrees to retain all books, records, and other documents relevant to this Agreement for six years after the final payment or termination of this Agreement, whichever is later. City, State and Federal auditors

and any other persons duly authorized by the Department shall have full access to and the right to examine any of said materials during said period.

9.3 NO REMOVAL OF RECORDS FROM PREMISES

Where performance of this Agreement involves use by the Contractor of Department papers, files, data or records at Departmental facilities or offices, the Contractor shall not remove any such papers, files, data or records therefrom without the prior approval of the Department's designated official.

9.4 AUDIT BY THE DEPARTMENT OF THE COMPTROLLER OF THE CITY OF NEW YORK

All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based are subject to audit by the Department and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon said Department and said Comptroller by the New York City Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.

The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by said Department and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to the Department and the Comptroller as they consider necessary.

All books, vouchers, records, reports, canceled checks and any and all similar material may be subject to periodic inspection, review and audit by the State of New York, Federal Government and other persons duly authorized by the City.

The Contractor shall not be entitled to final payment under the Agreement until all requirements have been satisfactorily met.

ARTICLE 10 - REPRESENTATIONS AND WARRANTIES

10.1 PROCUREMENT OF AGREEMENT

A. The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Contractor further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution hereof.

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

10.2 CONFLICT OF INTEREST

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

which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

10.3 FAIR PRACTICES

The Contractor and each person signing on behalf of any Contractor represents and warrants and certifies, under penalty of perjury, that the best of its knowledge and belief:

A. The prices in this Agreement have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating such prices with any other Vendor or with any competitor.

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal submitted by the Contractor have not been knowingly disclosed by the Contractor prior to the proposal opening, directly or indirectly, to any other Vendor or any competitor; and

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

The fact that the Contractor (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to others customers at the same prices being Proposed, does not constitute, without more, a disclosure within the meaning of the above.

ARTICLE 11. EXTENSION OF TIME FOR PERFORMANCE

Upon written application by the contractor, the Agency Chief Contracting Officer may grant an extension of time for performance of the contract. Said application must state, at a minimum, in detail, each cause for delay, the date(s) the cause of the alleged delay occurred, and the total number of delay in days attributable to such cause.

The ruling of the Agency Chief Contracting Officer shall be final and binding as to the allowance of an extension and the number of days allowed.

ARTICLE 12 - COVENANTS OF THE CONTRACTOR

12.1 EMPLOYEES

All experts or consultants or employees of the Contractor who are employed by the Contractor to perform work under this Agreement are neither employees of the City nor under contract to the City and the Contractor alone is responsible for their work, direction, compensation and personal conduct while engaged under this Agreement. Nothing in this Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, worker's compensation, disability benefits and social security, or, except as specifically stated in this Agreement to any person, firm or corporation.

12.2 INDEPENDENT CONTRACTOR STATUS

The Contractor and the Department agree that the Contractor is an independent contractor, and not an employee of the Police Department, or any other Department, of the City of New York, and that in accordance with such status as independent contractor, the Contractor agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the City of New York, or of any department, agency or unit thereof, by reason thereof and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer of or employee of the City of New York including, but not limited

to, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

12.3 CONFIDENTIALITY

All of the reports, information or data, furnished to or prepared, assembled or used by the Contractor under this Agreement are to be held confidential, and prior to publication, the Contractor agrees that the same shall not be made available to any individual or organization without the prior written approval of the Department.

The provisions of this Section shall remain in full force and effect following termination of, or cessation of the services required by this Agreement.

12.4 COMPLIANCE WITH LAW

Contractor shall render all services under this Agreement in accordance with the applicable provision of Federal, State and local laws, rules and regulations as are in effect at the time such services are rendered.

12.5 EMPLOYMENT PRACTICES

Contractor and its subcontractors shall comply with the Civil Right Act of 1964 and any amendment thereto, and the rules and regulations thereunder, and Executive Order No. 50, as attached hereto.

12.6 INVESTIGATION CLAUSE

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

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

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

1.3(a) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

1.3(b) If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 1.5 below without the City incurring any penalty or damages for delay or otherwise.

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

- (a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting Proposals for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or
- (b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; moneys lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

1.5 The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate:

- (a) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- (b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (c) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- (d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under 1.4 above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in 1.3(a) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

1.6 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.

- (a) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (b) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives moneys, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.
- (c) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

1.7 In addition to and notwithstanding any other provision of this agreement the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three(3) days written

notice in the event Contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Contractor, or affecting the performance of this contract.

12.7 ASSIGNMENT

A. The Contractor shall not assign, transfer, convey, sublet or otherwise dispose of this Agreement, or of the Contractor's right title, interest, obligations or duties herein, or the Contractor's power to execute such Agreement, or assign, by power of attorney or otherwise, any of its rights to receive moneys due or to become due under this Agreement, unless the prior written consent of the Department shall be obtained. Any such assignment, transfer, conveyance, sublease or other disposition without such consent should be void.

B. In the event that the Contractor assigns, transfers, conveys, sublets or otherwise disposes of this Agreement as specified in subdivision A, above, without the prior written consent of the Department, the Department shall revoke and annul this Agreement and the Department shall be relieved and discharged from any and all liability and obligations growing out of such Agreement to the Contractor, its assignees, transferees or subleases shall forfeit and lose all moneys theretofore earned under this Agreement, except so much thereof as may be required to pay the Contractor's employees. The provisions of this section shall not hinder, prevent or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the laws of the State of New York.

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

12.8 SUBCONTRACTING

A. The Contractor agrees not to enter into any sub contracts for the performance of the obligations, in whole or in part, under this Agreement without the prior written approval of the Department. Two copies of each such proposed subcontract shall be submitted to the Department with the Contractor's written request for approval.

B. All such subcontracts shall contain provisions specifying:

1. that the work performed by the subcontractor must be in accordance with the terms of the Agreement between the Department and the Contractor,
2. that nothing contained in such contract shall impair the rights of the Department,
3. that nothing contained therein, or under the Agreement between the Department and the Contractor shall create any contractual relationship between the subcontractor and the Department, and
4. that the subcontractor specifically agrees to be bound by the confidentiality provision set forth in this Agreement between the Department and the Contractor.

C. The Contractor agrees that it is fully responsible to the Department for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by it.

D. The aforesaid approval is required in all cases other than individual employer contracts.

E. The Contractor shall not in any way be relieved of any responsibility under this Agreement by any subcontract.

12.9 PUBLICITY

A. The prior written approval of the Department is required before the Contractor or any of its employees, servants, agents, or independent contractors may, at any time, either during or after completion or termination of this Agreement make any statement to the press or issue any material for publication through the media of communication bearing on the work performed or data collected under this Agreement.

B. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, the Department shall have a royalty fee, non exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the publication.

12.10 PARTICIPATION IN AN INTERNATIONAL BOYCOTT

A. The Contractor agrees that neither the Contractor nor any substantially owned affiliated company is participating, or shall participate, in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, of the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of the Contractor or a substantially owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render forfeit and void this contract.

C. The Contractor shall comply in all respects, with the provisions of Section 343-10.0 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

12.11 INVENTIONS, PATENTS AND COPYRIGHTS

A. Any discovery or invention arising out of or developed in the course of performance of this Agreement shall be promptly and fully reported to the Department, and if this work is supported by a federal grant of funds, it shall be promptly and fully reported to the Federal Government for determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

B. No report, document or other data produced in whole or in part with contract funds shall be copyrighted by the Contractor nor shall any notice of copyright be registered by the Contractor in connection with any report, document or other data developed for the Agreement.

C. If any copyrightable material is developed under, or in the course of performing this Agreement, any Federal Agency providing federal financial participation for the Agreement shall have a royalty fee, non exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, the work for governmental purposes.

D. In no event shall Subsections A, B, and C of this Section be deemed to apply to any report, document or other data, or any invention of the Contractor which existed prior to, or was developed or discovered independently from, its activities related to or funded by this Agreement.

12.12 ANTI TRUST

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

12.13 POLITICAL ACTIVITY

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

B. No funds provided under this Agreement shall be used, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress of the United States, except in presentation to the Congress itself.

C. No funds provided under this Agreement shall be used to pay the salary or expenses of any person to engage in any activity designed to influence legislation or appropriations pending before the Congress of the United States.

12.14 CLEAN AIR PROVISIONS

A. If the amount of this Agreement is in excess of \$100,000 the Contractor shall comply with all applicable standards, order or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857B, et. seq.) and the Federal Water Pollution Act (33 U.S.C. 1251, et. seq.).

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

C. In accordance with the provisions of Section 1403.3.2.25, Noise abatement contract compliance, of Specifications of this Contract of Chapter 57 of the Administrative Code of the City of New York.

1. Devices and activities which will be operated, conducted, constructed or manufactured pursuant to this Contract and which are subject to the provisions of the New York City Noise Control Code shall be operated, conducted, constructed or manufactured without causing a violation of the code.

2. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise omitted or produced by such devices and activities in accordance with regulations issued by the Administrator of the Environmental Administration. Regulations promulgated pursuant to Section 1403.3.2.25 after the Proposal openings for this Contract shall not alter its terms, conditions and specifications.

ARTICLE 13- TERMINATION

13.1(a) At any time during the period of this Agreement the Department upon ten (10) days written notice to the Contractor may cancel the Agreement and terminate the service. In such event the Contractor shall be paid whatever sum has become due to him for services performed prior to the effective date of the cancellation without further liability to the City.

13.1(b) The Contractor shall be entitled to apply to the Department to have this Agreement terminated by said Department by reason of any failure in the performance of this Agreement (including any failure by the Contractor to make progress in the prosecution of work hereunder which endangers such performance), if such failure arise out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, or any other cause beyond the reasonable control of the Contractor. The determination that such failure arises out of causes beyond the control and without the fault or negligence of the Contractor shall be made by the Department which agrees to exercise reasonable judgment therein. If such a determination is made and the Agreement terminated by the Department pursuant to such application by the Contractor, such termination shall be deemed to be without cause.

13.1(c) All payments pursuant to this section 13.1 shall be accepted by the Contractor in full satisfaction of all claims against the City arising out of termination.

13.2 The Contractor may be declared in default by this Agency and the Department may terminate the Agreement in whole or in part by written notice to the Contractor for, but not limited to, the following:

- A. The Contractor becomes insolvent; or
- B. The Contractor makes an assignment for the benefit of creditors pursuant to the Statutes of the State of New York; or
- C. A voluntary or involuntary petition in bankruptcy be filed by or against the Contractor; or
- D. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or
- E. The Contractor sublets, assigns, transfers, conveys or otherwise disposes of this Agreement other than as herein specified; or
- F. The Contractor fails or refuses to proceed with the work when and as directed by the Administrator; or
- G. The Contractor is or has been unnecessarily or unreasonably or willfully delaying
 - (i) the performance and completion of the work, or
 - (ii) the award of necessary subcontracts, or
 - (iii) the placement of necessary material and equipment order; or
- H. The Contractor, without just cause, reduces his working force to a number which, if maintained, would jeopardize the timely performance of the contract, and fails or refuses to increase such working force when ordered to do so by the Commissioner; or
- I. The work cannot be completed or is not completed within the time herein provided therefor or within the time to which such completion may have been extended unless, however, the delay is caused by circumstances under the Commissioner's control; or
- J. The Contractor abandons the work; or
- K. The Contractor is or has been willfully or in bad faith violating any of the provisions of this contract.

13.3 In the event the Commissioner terminates this Agreement in whole or in part as provided in section 13.2 above, the City may procure, upon such terms and in such manner deemed appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the City for any excess costs for such similar supplies or services provided that, the Contractor shall continue the performance of this Agreement to the extent not terminated thereby.

13.4 Before the Commissioner shall exercise his right to declare the Contractor in default by reason of the conditions set forth in Section 13.2 A, F, G, H, I, and K, he shall give the Contractor an opportunity to be heard, upon two (2) days written notice, at which hearing the Contractor may have a stenographer present provided, however, that a copy of such stenographic notes, if any, shall be furnished to the Commissioner.

13.5 Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of Contractor's default, and the City may withhold payments to the Contractor for the purpose of set off until such time as the exact amount of damages due to the City from the Contractor is determined.

13.6 The provisions of the Agreement regarding confidentiality of information shall remain in full force and effect following any termination.

13.7 The rights and remedies of the City provided in this article shall not be exclusive and are in addition to all other rights and remedies provided by law or under this Agreement.

ARTICLE 14 - LEGAL FORUM

14.1 CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

This Agreement shall be deemed to be executed in the City of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that any and all claims asserted by or against the City arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effectuate this agreement and intent, the Contractor agrees:

- A. If the City initiates any action against the Contractor in Federal Court or in New York State Court, service of process may be made by the Contractor either in person, whenever such Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth in this Agreement, or to such other address as the Contractor may provide to the City in writing and
- B. With respect to any action between the City and the Contractor in New York State Court, the Contractor hereby expressly waives and relinquishes any rights it might otherwise have;
 - (a) to move to dismiss on grounds of forum non conveniens,
 - (b) to remove to Federal Court and
 - (c) to move for a change of venue to a New York State Court outside New York County.
- C. With respect to any action between the City and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
- D. If the Contractor commences any action against the City in a Court located other than in the City and State of New York, upon request of the City, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter re-institute the action in a court of competent jurisdiction in New York City.

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

14.2 GENERAL RELEASE

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

14.3 CLAIMS AND ACTIONS THEREON

No claims against the City for damages for breach of Contract or compensation for extra work shall be made or asserted in any action or proceeding at law or in equity, unless the Contractor shall have strictly complied

with all requirements relating to the giving of notice and of information with respect to such claims as have been herein provided.

Nor shall any such action or proceeding be instituted or maintained on any such claims unless such action or proceeding be commenced within one (1) year after the date of the filing in the Office of the Comptroller of the final payment voucher; except that an action or proceeding on a claim for moneys deducted, retained or withheld under the provisions of this Contract or of law, must be commenced within one (1) year after the date of final payment hereunder or after such moneys become due and payable hereunder, whichever is later, and further except that an action or proceeding on a claim based upon the Commissioner's exercise of the right to declare the Contractor in default must be commenced within six (6) months after the date the Commissioner declared the Contractor in default.

In the event any claim is made or any action brought in any way relating to the Contract herein, the Contractor shall diligently render to the Department and/or the City of New York without additional compensation any and all assistance which the Department and/or the City may require of the Contractor.

14.4. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

No claim whatsoever shall be made by the Contractor against any officer, agent or employee of the City for, or on account of, anything done or omitted to be done in connection with this Contract.

14.5 NO ESTOPPEL

Neither the City nor any department, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this contract by the City, the Commissioner, the Project Manager, or any other officer, agent or employee of the City, either before or after the final completion and acceptance of the work and payment therefor:

- (1) From showing the true and correct classification, amount, quality or character of the work actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular or that the work or any part thereof does not in fact conform to the requirements of this contract; and
- (2) From demanding and recovering from the Contractor any overpayments made to him, or such damages as it may sustain by reason of his failure to perform each and every part of this contract in strict accordance with its terms, or both.

14.6 WAIVER

Waiver by the Department of a breach of any provision of this Contract shall not be deemed to be a waiver of any other subsequent breach and shall not be construed to be a modification of the terms of the Contract unless and until the same shall be agreed to in writing by the Department or City as required and attached to the original Contract.

14.7 NOTICES

The Contractor and the Department hereby designate the business addresses specified in the Proposal or Bid as the places where all notices, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Actual delivery of any such notice, direction or communication to a party at the aforesaid place, or delivery by certified mail shall be conclusive and deemed to be sufficient service thereof upon such party as of the date such notice, direction or communication is received by the party. Such address may be changed at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified above. Nothing in this section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by law.

14.8 ALL LEGAL PROVISIONS DEEMED INCLUDED

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

14.9 SEVERABILITY

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

14.10 MODIFICATIONS

This Agreement may be modified by the parties in writing in a manner not materially affecting the substance hereof. It may not be altered or modified orally.

14.11 PARAGRAPH HEADINGS

Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement and in no way affects this Agreement.

14.12 INSPECTION AT SITE

The Department shall have the right to have representatives of the Department or of the City or of the State or Federal governments present at the site of the engagement to observe the work being performed.

ARTICLE 15 - CONTRACTOR EVALUATION PROVISION

The Contractor's performance shall be evaluated by the City upon the occurrence of the substantial completion of this contract. A copy of the evaluation will be sent to the Contractor not later than fifteen (15) calendar days after the occurrence of these events and the Contractor may respond in writing to the performance report. Such responses shall be submitted to the Project Manager not later than fifteen (15) calendar days after a copy of the evaluation is sent to the Contractor. The response will be affixed to the evaluation. Failure to respond may result in review of Contractor's performance when a Proposal is evaluated without the benefit of Contractor's response to the report.

ARTICLE 16 - TAX EXEMPTION

Attention is specifically called to the New York State Tax Law, Sections 1115 (a) (15) and 1116 (a) (1), which exempts from New York State Sales Tax and Compensation Use Tax, and Administrative Code of the City of New York Sections 11-2006 and 11-2007 which exempts from the New York City Sales tax, the purchase of materials required by this contract, except materials consumed by the Contractor in the performance thereof. Therefore, the Contractor, when bidding, should not include amount to cover such New York State or New York City taxes in the sale price.

The City of New York (City) is exempt from payment of Federal, State, local taxes and Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the City pursuant to the provisions of this contract. These taxes are not to be included in Proposals. However, this exemption does not apply to tools, machinery, equipment of other property leased by or to the Contractor or a subcontractor, or to supply and materials which, even though they are consumed, are not incorporated into the

completed work (consumable supplies), and the Contractor and his subcontractors shall be responsible for and pay any and all applicable taxes, including Sales and Compensating Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.

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

1. The sum paid under this Agreement for such materials shall be and is deemed to be in full payment and consideration for the sale of such materials under this Agreement. The Contractor agrees to construct the work and to perform all work, labor and services, and the sum so paid pursuant to this agreement for such work, labor and services, shall be and is deemed to be in full consideration for the performance by the Contractor of all his duties and obligations under this Agreement in connection with said work and labor.

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

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

The purchase by subcontractors of materials to be sold hereunder shall also be a purchase or procurement for resale to the Contractor (either directly or through other subcontractors) and therefore not subject to the aforesaid sale, or compensating use taxes, provided that the subcontract agreements provide for the resale of such materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction and that such subcontract agreements are in a form similar to this Contract with respect to the separation of the sale of materials from the work and labor, services, consumable supplies and any other matters to be provided and further that the subcontract agreements provide separate prices for (1) materials and (2) all other services and matters.

2. The subcontract agreements in connection with this Contract shall provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent construction, and shall provide separate prices for (1) materials and (2) all other services and matters.

Such subcontract agreements shall be in a form similar to this contract with respect to the separation of the sale of materials from the work and labor and other things to be provided. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other work and labor and other things to be provided.

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

ARTICLE 17- CONTRACT CHANGES

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

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

The Contractor shall be entitled to a price adjustment for extra work performed pursuant to a written change order. If any part of the contract is necessarily delayed by a change order, the Contractor will be entitled to an extension of time for performance. Adjustments to price shall be computed in one or more of the following ways: (i) by agreement of a fixed price; (ii) by unit prices specified in the contract; (iii) by time and material record; and/or (iv) in any other manner approved by the City Chief Procurement Officer.

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

Except in the case of requirements contracts, any contract increases amendment which either amends a unit price, cancels required units, or adds a new type of unit item to the contract must be approved in writing by the Agency Chief Contracting Officer.

17.1 PRICING

A. The Contractor shall whenever requested by the Commissioner during the contract, including but not limited to the time of bidding, submit cost or pricing data and formally certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a specified date. The Contractor shall be required to keep its submission of cost and pricing data current until the contract has been completed.

B. The price of any change order, or contract modification subject to the conditions of paragraph A, shall be adjusted to exclude any significant sums by which the City finds that such price was based on cost or price data furnished by the supplier which was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

C. Time for Certification. The Contractor must certify that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.

D. Refusal to Submit Data. When any contractor refuses to submit the required data to support a price, the Contracting Officer shall not allow the price.

E. Certification of Current Cost or Pricing Data. Form of Certificate. In those cases when cost or pricing data is required, certification shall be made in accordance with 2-06 of the PPB Rules and such certification shall be retained in the agency contract file.

F. If the City finds that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

- (a) The Contractor was a sole source supplier or otherwise in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete and current cost or pricing data had been submitted;
- (b) The City should have known that the cost or pricing data in issue were defective even though the contractor took no affirmative action to bring the character of the data to the attention of the City;
- (c) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

17.2 METHODS OF PAYMENT FOR EXTRA WORK

Extra work for which there are applicable contract unit prices will be paid for at such unit prices. Where there are no applicable contract unit prices, subject to audit by the NYPD and subject to post audit by the Comptroller, the price to be paid for extra work ordered pursuant to Article 17, and performed by the Contractor with his own forces, shall be the actual and reasonable cost of:

- (1) Necessary materials (including transportation to the site); plus
- (2) Necessary direct labor; plus
- (3) All insurance required by reason of the performance of the extra work; plus
- (4) Payments required to be made to labor organizations under existing labor agreements; plus
- (5) Sales and personal property taxes, if any, required to be paid on materials incorporated in such extra work; plus
- (6) Maintenance, operation and rental of, or reasonable rental value of Contractor owned, necessary plant and equipment other than small tools (including gas, oil, coal, electric current, etc.), plus
- (7) Necessary installation and dismantling of such plant and equipment (including transportation to and from the site), if any items, plus
- (8) Ten (10) percent of the total of Items 1 through 7 as compensation for all other items of cost or expense including administration, overhead, general superintendence, and small tools; plus
- (9) Ten (10) percent of the total of Items 1 through 8 as compensation for profit except that no percentage for overhead and profit will be allowed on payroll taxes or on the premium portion of overtime pay.

Where there are no applicable unit prices for extra work ordered pursuant to Article 17 and performed in whole or in part by other than the Contractor's own forces, the Contractor shall be paid, subject to audit by the Department, and subject to a post audit by the Comptroller, only the actual and reasonable cost of such subcontracted work computed as outlined above, plus an additional allowance of five (5) percent to cover the Contractor's profit, superintendence, administration, insurance and other overhead.

Where a change is ordered, involving both extra work and omitted or reduced contract work, the contract price shall be adjusted, subject to audit by the Department, and subject to a post audit by the Comptroller in an amount based on the difference between the value of such extra work and of the work omitted or reduced. The cost of such extra work and of such omitted or reduced work shall be computed in accordance with Items 1 through 7 of this Article. If the cost of such extra work exceeds the cost of the work omitted or reduced, the contract price shall be increased by the difference, plus ten (10) percent thereof, as compensation for all other items of cost or expense including administration, overhead, superintendence and small tools, plus an additional ten (10) percent on the total thereof as compensation for profit. If the cost of work omitted or reduced exceeds the cost of such extra work, then the contract price shall be reduced by such differences.

Where the Contractor and the Commissioner can agree upon another method of payment for extra work, or for extra work ordered in connection with omitted or reduced work, such method, subject to audit and revision by the Comptroller, may, at the option of the Commissioner be substituted for the cost plus a percentage method provided. However, that if the work is performed by a subcontractor, the Contractor shall not be entitled to receive more than an additional allowance of ten (10) percent over and above the actual and reasonable cost of such subcontractor's work.

17.3 DISPUTED WORK, DETERMINATION OR ORDER

If the Contractor is of the opinion,

1. that any work ordered to be done as contract work by the Commissioner, or the Project Manager, is extra work and not contract work; or
2. that any determination or order of the Commissioner, or Project Manager violates the terms and provisions of this contract, he must promptly, and before proceeding with such work or complying with such determination or order, or simultaneously therewith notify the Commissioner in writing of the reasons for his opinion with respect thereto, and request a final determination thereon. Such determination shall be rendered within a reasonable time.

If the Commissioner determines that the work in question is contract work and not extra work, or that the determination or order complained of is proper, he will so notify the Contractor to proceed, and the Contractor must promptly comply. However, in order to reserve his right to claim compensation for such work or damages resulting from such compliance, the Contractor must, within five (5) days after receiving notice of the Commissioner's determination and direction, notify the Commissioner in writing that the work is being performed or that the determination and direction is being complied with under protest.

If the Contractor fails to so appeal to the Commissioner for a determination or, having so appealed, should the Contractor thus fail to notify the Commissioner in writing of his protest, the Contractor shall be deemed to have waived any claim for extra compensation or damage therefor. Oral appeals or oral protests, no matter to whom made, shall not be deemed even substantial compliance with the provisions of this Article.

If the Contractor shall also claim to be sustaining damages by reason of any act or omission of the City or its agents, he shall within five (5) days after the sustaining of such damage, notify the Commissioner in writing and within thirty (30) days thereafter, or within such additional time in excess of thirty (30) days as may be granted by the Commissioner upon written request therefor, submit to the Commissioner verified detailed statements of the damages sustained together with documentary evidence of such damages. On failure of the Contractor to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist.

In addition to the statements required under this Article, the contractor and his subcontractor shall, upon notice from the Commissioner or the Comptroller, or either of them, produce for examination at the Contractor's or subcontractor's office, by the representatives of the Commissioner, all his books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, canceled checks, showing all of his acts and transactions in connection with or relating to or arising by reason of this contract, and submit himself and persons in his employment, for examination under oath by any person designated by the Commissioner to investigate claims made against the City under this contract. At such examination a duly authorized representative of the Contractor may be present.

Unless such statements shall be made and filed within the time aforesaid and such records submitted for examination and the Contractor and his employees submit themselves for examinations as aforesaid, the City shall be released from all claims arising under, relating to or by reason of this contract, except for the sum certified by the Commissioner to be due under the provisions of this contract. It is further stipulated and agreed that no person has power to waive any of the foregoing provisions, and that in any action against the City to recover any sum in excess of the sums certified by the Commissioner to be due under or by reason of this contract, the Contractor must allege in his complaint and prove, at the trial, compliance with the provisions of this section.

In addition to the foregoing, after the commencement of any action by the Contractor arising under or by reason of this contract, the City shall also have the right by its attorney, upon written notice from said attorney, to require the Contractor to produce for examination under oath by said attorney the above described books and documents of the Contractor and to submit himself and persons in his employ for examination under oath by said attorney.

Unless the Contractor submits said records, himself and his employees for examination by the said attorney as aforesaid, the action of the Contractor shall be dismissed.

In connection with the examination provided for herein, the Commissioner, upon demand, therefor will also produce for inspection by the Contractor such records as the Department may have with respect to such disputed work or work performed under protest pursuant to order of the Commissioner, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

17.4 PERFORMANCE OF EXTRA OR DISPUTED WORK

While the Contractor or his subcontractor is performing extra work ordered by the Commissioner under Article 17 hereof (unless payment therefor is to be made by a lump sum or at unit prices previously agreed upon) or is performing disputed work or complying with a determination or order under protest in accordance with Article 17.2 hereof, in each such case the Contractor shall furnish the Project Manager daily with three (3) copies of written statements signed by the Contractor's representatives at the site showing:

- (1) The name and number of each workman employed on such work or engaged in complying with such determination or order, the number of hours employed thereon, and the character of the work each is doing; and
- (2) The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such work or compliance with such determination or order, and from whom purchased or rented.

A copy of such statement will be countersigned by the Project Manager, noting thereon any items not agreed to or questioned, and be returned to the Contractor within two (2) days after submission.

The Contractor, and his subcontractors, when required by the Commissioner, or the Comptroller, or either of them, must also produce for inspection, at the office of the Contractor or subcontractor, any and all of his books, vouchers, records, daily job diaries and reports, and canceled checks, showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such work or in complying with such determination or order, and the amounts expended therefor, and must permit the Commissioner and the Comptroller to make such extracts therefrom or copies thereof as they or either of them may desire.

In connection with such examination provided for herein, the Commissioner, upon demand, therefor, will also produce for inspection by the Contractor such records as the Department may have with respect to such extra or disputed work or work performed under protest pursuant to order of the Commissioner except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the Contractor's claim.

Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such work or compliance with such determination or order.

ARTICLE 18 - APPROVALS

This Contract shall not become effective or binding unless:

- A. the Comptroller shall have endorsed his certificate that there remains unexpended and unapplied a balance of appropriation of funds applicable hereto sufficient to pay the estimated expense of executing this Contract; and
- B. approved by the Mayor pursuant to the provisions of Executive Order No.42, dated October 9, 1975 in the event the Executive Order requires such approval; and
- C. certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No.43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plans; and

D. the requirement of this Article shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Contract to be effective and for the expenditure of City funds.

ARTICLE 19. RESOLUTION OF DISPUTES

(a) Applicability. This section shall apply to disputes between the City and a supplier that arise under, or by virtue of, a contract between them. All contracts shall include a clause providing that all disputes of the kind delineated herein shall be finally resolved in accordance with the provisions of this section. Parties to contracts that do not contain this clause may by written agreement consent to the resolution of any disputes pursuant to this section.

(1) This section shall not apply to disputes concerning matters dealt with in other sections of these Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.

(2) For construction, this section shall apply only to disputes about the scope of work delineated by the contract, the interpretation of contract documents, the amount to be paid for extra work or disputed work performed in connection with the contract, the conformity of the supplier's work to the contract, and the acceptability and quality of the supplier's work; such disputes arise when the Engineer (defined in the contract) makes a determination with which the supplier disagrees.

(b) General Provisions. All determinations required by this section shall be clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this section shall be deemed a non-determination without prejudice that will allow application to the next level.

(c) Work to Continue. During such time as any dispute is being presented, heard, and considered pursuant to this section, the contract terms shall remain in force and work shall continue as directed by the ACCO or Engineer. Failure of the supplier to continue the work as directed shall constitute a waiver by the supplier of its claim.

(d) Presentation of Dispute to Agency Head.

(1) Notice of Dispute and Agency Response. The supplier shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified by the contract or, if no time is specified, within thirty (30) days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the contract. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the supplier relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the supplier in the dispute was arrived at. Within thirty (30) days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction, the Engineer, shall submit to the Agency Head all materials he or she deems pertinent to the dispute. Following initial submissions to the Agency Head, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the Agency Head whose decision shall be final. Wilful failure of the supplier to produce any requested material whose relevancy the supplier has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the supplier of its claim.

(2) Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the supplier and the ACCO and, in the case of construction, the Engineer, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein.

The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other supplier with a contract related to that of the party presenting the dispute, and that supplier shall be bound by the decision of the Agency Head. Any supplier thus brought into the dispute resolution proceeding shall have the same rights and obligations under this section as the supplier initiating the dispute.

(3) Agency Head Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the supplier and ACCO and, in the case of construction, the Engineer, together with a statement concerning how the decision may be appealed.

(4) Finality of Agency Head Decision. The Agency Head's decision shall be final and binding on all parties, unless presented to the CDRB pursuant to this section. The City may not take a petition to the CDRB. However, should the supplier take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the supplier and more favorable to the City than the decision of the Agency Head.

(e) Presentation of Dispute to the Comptroller. Before any dispute may be brought by the supplier to the CDRB, the supplier must first present its claim to the Comptroller for his or her review, investigation, and possible adjustment.

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

(2) Agency Response. Within thirty (30) days of receipt of the Notice of Claim, the agency shall make available to the Comptroller a copy of all material submitted by the agency to the Agency Head in connection with the dispute. The agency may not present to the Comptroller any material not presented to the Agency Head except at the request of the Comptroller.

(3) Comptroller Investigation. The Comptroller may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in sections 7-201 and 7-203 of the New York City Administrative Code. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the supplier. Willful failure of the supplier to produce within fifteen (15) days any material requested by the Comptroller shall constitute a waiver by the supplier of its claim. The Comptroller may also schedule an informal conference to be attended by the supplier, agency representatives, and any other personnel desired by the Comptroller.

(4) Opportunity of Comptroller to Compromise or Adjust Claim. The Comptroller shall have forty-five (45) days from his or her receipt of all materials referred to in (e)(3) to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the supplier and the Comptroller, to a maximum of ninety (90) days from the Comptroller's receipt of all materials. The supplier may not present its petition to the CDRB until the period for investigation and compromise delineated in this section has expired. In compromising or adjusting any claim hereunder, the Comptroller may not revise or disregard the terms of the contract between the parties.

(f) Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

(1) the chief administrative law judge of OATH or his/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this

section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

(2) the CCPO or his/her designee, or in the case of disputes involving construction, the Director of the Office of Construction or his/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated, and

(3) a person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH, with appropriate background to act as decision-makers in a dispute. Such individuals may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represent persons, companies, or organizations having disputes with the City.

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

(1) Form and Content of Petition by Supplier. The supplier shall present its dispute to the CDRB in the form of a Petition, which shall include (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the supplier contends that the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; (iii) copies of all materials submitted by the supplier to the agency; (iv) a copy of the decision of the Comptroller, if any, and (v) copies of all correspondence with, and material submitted by the supplier to, the Comptroller's Office. The supplier shall concurrently submit four complete sets of the Petition: one to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division), and three to the CDRB at OATH's offices, with proof of service on the Corporation Counsel. In addition, the supplier shall submit a copy of the statement of the substance of the dispute, cited in (i) above, to both the Agency Head and the Comptroller.

(2) Agency Response. Within thirty (30) days of receipt of the Petition by the Corporation Counsel, the agency shall respond to the statement of the supplier and make available to the CDRB all material it submitted to the Agency Head and Comptroller. Three complete copies of the agency response shall be submitted to the CDRB at OATH's offices and one to the supplier. Extensions of time for submittal of the agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to thirty (30) days.

(3) Further Proceedings. The Board shall permit the supplier to present its case by submission of memoranda, briefs, and oral argument. The Board shall also permit the agency to present its case in response to the supplier by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the agency's case. Neither the supplier nor the agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the CDRB. The CDRB, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The CDRB, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

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

(5) Notification of CDRB Decision. The CDRB shall send a copy of its decision to the supplier, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, the Office of Construction, the PPB, and, in the case of construction, the Engineer. A decision in favor of the supplier shall be subject to the prompt payment provisions of these Rules. The Required Payment Date shall be thirty days after the date the parties are formally notified of the CDRB's decision.

(6) Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four (4) months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with this rule.

ARTICLE 20 - OMITTED WORK

If any contract work in a lump sum contract, or if any part of a lump sum item in a unit price contract is omitted by the Commissioner, the contract price subject to audit by the Comptroller, shall be reduced by an amount equal to the estimated cost of such omitted work, computed in accordance with Items 1 through 9 of Article 17.1, unless the Contractor and Commissioner can agree upon another method of fixing the value of such omitted work. If any contract work in a unit price contract, whether the whole of a lump sum item or units of any other item, is so omitted by the Commissioner, no payment will be made therefor.

ARTICLE 21 – PERFORMANCE BOND

The Contractor shall provide and maintain during the Agreement term a performance bond using the following form and content:

(Remainder of Page Blank—See next page)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, That we,

hereinafter referred to as the "Principal", and

hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as the "City" or to its successors and assigns, in the penal sum of:

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

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with the City for:

a copy of which Contract is annexed to and hereby made a part of this bond as though herein set forth in full.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and/or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the City from all cost and damage which it may suffer by reason of failure so to do, and shall fully reimburse and repay the City for all outlay and expense which the City may incur in making good any such default and shall protect the said City of New York against, and pay any and all amounts, damages, costs and judgments which may or shall be recovered against said City or its officers or agents or which the said City of New York may be called upon to pay to any person or corporation by reason of any damages arising or growing out of the doing of said work, or the repair or maintenance thereof, or the manner of doing the same, or the neglect of the said PRINCIPAL, or his (their, its) agents or servants, or the improper performance of the said work by the said PRINCIPAL, or his (their, its) agents or servants, or the infringement of any patent or patent rights by reason of the use of any materials furnished or work done as aforesaid or otherwise, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, if requested to do so by the City, to fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof, if for any cause, the Principal fails or neglects to so fully perform and complete such Work. The Surety (Sureties) further agrees to commence such Work of completion within twenty (20) days after written notice thereof from the City and to complete such Work within such time as the City may fix.

The Surety (Sureties) for value received, for itself and its successors and assigns, hereby stipulates and agrees that

the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said Contract of the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof, or any Work to be performed, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, Subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

IN WITNESS WHEREOF, the Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to be signed by their proper officers, this _____ day of _____ 20__.

(SEAL) _____ (L.S.)
Principal

By: _____

(SEAL) _____
Surety

By: _____

(SEAL) _____
Surety

By: _____

(SEAL) _____
Surety

By: _____

(SEAL) _____
Surety

Bond Premium Rate: _____

Bond Premium Cost: _____

If the Contractor (Principal) is a partnership, the bond should be signed by each of the individuals who are partners. If the Contractor (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

ACKNOWLEDGMENT

On this _____ day of _____, 20__, personally
came _____ who being by me duly sworn, did depose and say the s/he is the
_____ of _____, and that s/he is authorized to execute the foregoing
document on behalf of said corporation, partnership, or firm.

Signature

Subscribed and sworn to me
this ____ day of _____, 20____.

Notary Public

Each executed bond should be accompanied by:

- (a) appropriate acknowledgment of the respective parties;
- (b) appropriate duly certified copy of Power of Attorney or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety;
- (c) a duly certified extract from By-Laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agent, Officer or representative was issued, and
- (d) duly certified copy of latest published financial statement of assets and liabilities of Surety.

AFFIX ACKNOWLEDGMENTS AND JUSTIFICATIONS OF SURETIES

| | | |
|---|---|--|
| PIN: 05609000629 | General Conditions Section 1. Schedule A | Contract Description: Invoiced Auto Towing, Storage, Auctioning and Salvaging Services |
| Reference | Item | Requirements |
| Invitation to Bid -Section C Info. For Bidders - Bid Secy. | Bid Deposit or Bid Bond | <u>Not Required</u> |
| Agreement - Article 6.1 and Article 21 | Performance and Completion/Labor and Material Bonds | 100% of the total value of the three year contract |
| Agreement - Article 4 | Time of Completion | 1,095 Consecutive Calendar Days (CCDs) with two 2-year options to renew |
| Agreement - Article 6.3 | Liquidated Damages | None |
| Agreement - Article 6.5 and Section 1.3 of the General Conditions | Retained Percentage and Workmanship Guarantee | 5% of each invoice. |
| Agreement - Article 12.8 | Subcontracting | Not to exceed 49% of contract price. |
| Insurance certificates, policies, and endorsements must be sent to NYPD CAU, 5 1 Chambers Street, 3rd Fl. NY, NY. 10007 | Insurance indicated by (X) will be required under this contract. | See Specific Insurance Requirements Below for further details concerning insurance requirements for this contract. |
| Agreement - Article 6.2 and Sec. 1.1 Below | Insurance Required if "X" appears in (). | Insurance Subject to Approval by NYPD |
| See Sec. 1.2 (1) Below See Sec. 1.2 (2) Below | (X) Workers' Compensation & Disability Benefits Coverage (X) Employer's Liability | Workers' Compensation and Disability Benefits Insurance: Statutory per New York State law without regard to jurisdiction. Employers' Liability: \$1,000,000 each accident |
| See Sec. 1.2 (3) Below | (X) Commercial General Liability (CG 00 01(ed 11/88)) or equivalent. Combined Single Limit - Bodily Injury and Property Damage | \$3,000,000 per occurrence \$3,000,000 products/completed operations \$6,000,000 general aggregate \$25,000/claim maximum deductible. |
| | (X) City of New York and the Police Department added as an additional insured to CGL policy. | |
| See Sec. 1.2 (4) Below | (X) Automobile Liability (CA 00 01(ed. 01/80)) | \$1,000,000 Bodily Injury and Property Damage Each occurrence. |
| See Sec. 1.2 (5) Below | () Professional Liability | N/A |
| See. Sec. 1.2.(6) Below | () Garage Keeper's Liability— | N/A |
| Agreement Article 5 | Partial Payment | (X) Will be Allowed () Will not be allowed |
| See Sec. 1.3 (2) Below | Payment Submissions and VENDEX for Subcontractors | See Section 1.3 (2) of the General Conditions for details on submitting payments and VENDEX for subs |
| SEE SECTION 2 General Conditions | MWBE SUBCONTRACTING REQUIREMENTS | Not Required |
| <u>MWBE UTILIZATION TARGET</u> | | <u>MWBE UTILIZATION GOAL</u> |
| <u>Black Owned Subcontractors</u> | | <u>To be determined by Vendor</u> |
| <u>Hispanic Owned Subcontractors</u> | | <u>To be determined by Vendor</u> |
| <u>Caucasian Female Subcontractors</u> | | <u>To be determined by Vendor</u> |
| <u>Total MWBE Subcontracting Goal:</u> | | <u>31%</u> |

SECTION 1.1 AGREEMENT TO INSURE

The Contractor shall procure and maintain, for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor, his agents,

representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

- (i) The Contractor shall obtain and maintain insurance outlined in Schedule A.
- (ii) The Insurance required for this contract must be on forms acceptable to the Department and offered by Insurers acceptable to the Department.
- (iii) All insurance contributing to satisfaction of Schedule A insurance requirements shall provide that the policy shall not be canceled, terminated or modified by the Company unless twenty (20) days prior written notice is given to The City of New York, Police Department, Contract Administration Unit, 3rd Floor, 51 Chambers Street, New York, NY, 10007.
- (v) The Contractor shall be solely responsible for payment of all premiums for insurance contributing to satisfaction of Schedule A requirements and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not the City of New York is named as additional insured.
- (vi) Claims made insurance policies will be accepted only for professional liability and such other risks as are authorized by the New York State Insurance Department. All such policies, contributing to satisfaction of Schedule A requirements, shall have an extended reporting period option or automatic coverage of not less than two years.
- (vii) The Contractor shall notify the Department's Legal Division of any accidents arising in the course of operations under this contract causing bodily injury or property damage.
- (viii) The Contractor or his engineer may apply to Police Department Legal Division for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.
- (ix) **All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least AA, unless prior written approvals is obtained from the New York City Mayor's Office of Operations.**

SECTION 1.2 SPECIFIC INSURANCE REQUIREMENTS

(1) Workers' Compensation Insurance:

Pursuant to Section 57 of the New York State Workers' Compensation Law, the bidder must submit proof of workers' compensation and disability benefits coverage to the Police Department prior to the execution of any contract resulting from this solicitation. Two certificates of such insurance or authority for self-insurance shall be furnished to the Commissioner.

Pursuant to Section 57 of the New York State Workers' Compensation Law, the Contractor shall maintain coverage of workers' compensation and disability coverage throughout the term of this contract, plus any time extensions thereto, and shall submit proof of coverage to the Police Department.

(2) Employer's Liability Insurance:

Before performing any work on the Contract, the Contractor shall procure Employer's Liability Insurance affording compensation for all employees proving labor or services for whom Worker's Compensation coverage is not a statutory requirement. Two certificates of such insurance shall be furnished to the Commissioner.

Certificates confirming renewals of insurance shall be presented not less than 30 days prior to the expiration date of coverage until all operations under this contract are deemed completed.

(3) Commercial General Liability:

The Contractor shall procure a Commercial General Liability Insurance (CGL) policy in the Contractor's name and adding the City of New York and the Police Department as additional insured (CG 20 10). The CGL shall be endorsed to cover liability assumed by the Contractor under the indemnity provisions of this agreement. The CGL shall be in effect before the commencement of work and must be maintained during the life of the contract. The CGL shall protect the City, the Contractor, and his/her subcontractors performing work at the site, from claims for property damage and/or bodily injury that may arise from operations under this contract; whether such operations are performed by him/herself or anyone directly or indirectly employed by him/herself. Two (2) certificates of insurance shall be furnished in a manner acceptable to the Police Department, together with copies of all endorsements as pertain to the requirements of this contract.

The City, its officers, officials and employees are to be covered as additional insureds for liability arising out of activities performed by or on behalf of the Contractor; and products and completed operations of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officers, officials, and employees.

The Contractor's insurance coverage shall be the primary insurance for the City, its officers, officials, and employees with respect to this contract.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Police Department, its officers, officials, and employees.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The Commercial General Liability Policy shall contain no exclusions or endorsements

that are not acceptable to the City and shall be on a form and issued by an insurance company acceptable to the City. Limits above are as provided in CG 00 01 (ed. 11/85).

Commercial General Liability - Endorsements and Exclusions.

Commercial General Liability insurance policies shall include the City of New York and the Police Department, as additional insured and shall contain, by rider annexed to such policies, the following provisions:

a. Notice shall be addressed to the Commissioner of the Police Department, c/o the Contract Administration Unit, 3rd Floor, 51 Chambers Street Place, New York, New York 10007.

b. Notice of Cancellation of Policy: The policy shall not be canceled, suspended, modified or changed by the Company unless the thirty (30) days prior written notice is sent to the Commissioner of the Police Department.

c. The following shall also be added as additional insureds:

N/A

(4) Automobile Insurance

Before commencing work at the site, the Contractor shall procure an Automobile Liability insurance policy in the Contractor's name and endorsed to cover liability assumed by the Contractor under the indemnity provisions of this agreement. This insurance policy must be maintained during the life of the contract and shall include comprehensive form coverage for all owned, hired and non-owned vehicles used in connection with the requirements of this contract. Two (2) certificates of insurance shall be furnished in a manner acceptable to the Police Department, together with copies of all endorsements as they may pertain to the requirements of this contract.

The Automobile Liability Policy shall contain no exclusions or endorsements that are not acceptable to the City and shall be on a form and issued by an insurance company acceptable to the City. Limits above are as provided in CA 00 01 (ed. 01/80).

The City, its officers, officials and employees are to be covered as insureds for liability arising out of activities performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City, its officers, officials, and employees.

The Contractor's insurance coverage shall be primary insurance for the City, its officers,

officials, and employees with respect to this Contract.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Police Department, its officers, officials, and employees.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

1.2. 5 Professional Liability

Professional Liability

CNA DESIGN PROFESSIONALS - 1-87503-A (ed. 8/83), or equivalent, covering as insured the Contractor's Engineer(s) / Design Consultant(s). The Professional Liability policy shall include an endorsement whereby the Contractor's Engineer / Design Consultant indemnifies and holds harmless the Commissioner of the Police Department and the City and each officer, agent and employee of the City against all claims against any of them, for personal injury of wrongful death or property damage arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor's Engineer / Design Consultant or anyone employed by the Contractor's Engineer / Design Consultant.

All subconsultants to the Contractor's Engineer/ / Design Consultant providing professional services under this contract shall also provide evidence of professional liability insurance to the Department's Agency Chief Contracting Officer at limits appropriate to the exposures of the sub-consultants work, with deductibles suitable for the financial capacity of the sub-consultant and through carriers and on forms acceptable to the Police Department.

7. Deductibles and Self-Insured Retention

Any deductible or self-insurance retention must be declared to and approved by the Agency Chief Contracting Officer. At the option of the Agency, either: the insurer shall reduce or eliminate such deductibles or self-insurance retention as respects the Agency, its officers, officials and employees; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

1.2.6 Garage Keeper

SECTION 1.3 - PAYMENT AND PERFORMANCE GUARANTEES and REQUIREMENTS

(1) Retainage and Workmanship Guarantee

a. Retainage: To further assure the faithful and acceptable completion of this contract, the Police Department will withhold as retainage the percentage set in the Schedule A for each invoice payment request. Retainage shall be held until by the Police Department until the contract completion. Within 60 days of the completion date, NYPD shall make a determination that the Contractor has completed the work required and has restored the work areas included in this contract to the satisfaction of the Department. The NYPD shall make a final acceptance

determination, in writing to the Contractor, within 60 days of the completion date. The total retained amount, or a portion thereof depending on performance, shall be paid to the Contractor after the NYPD makes its final acceptance determination.

b. Workmanship Guarantee: All work under the Agreement shall be guaranteed to be free from defect for the period stated in the Schedule A. If any work performed by the Contractor becomes defective during the guarantee period, the Contractor shall repair the defective work to the NYPD specifications. Such repair of defective work shall be further guaranteed to be free from defect for the period stated in the Schedule A.

c. The Contractor shall also provide a performance completion and payment bond, in the form included in the Agreement, equal to 100% of the total value of the three year contract.

(2) Payments Made and Due to Subcontractors

The Contractor shall include on each payment requisition a separate breakout of all subcontract work including for each subcontract the following:

Date; Subcontractor Name; Value of Subcontract; Total Amount Previously Paid to Subcontractor for work previously requisitioned; and the amount, including retainage, to be paid to the subcontractor for work included in the registration.

In addition, the Contractor shall have subcontractors submit to the Police Department - Contract Administration Unit- a complete VENDEX Business and Principal Questionnaires for each subcontract of \$100,000 or more.

3) City's Set-Off Rights

Nothing in this Contract shall limit the City's common law, equitable, and statutory rights of set-off. Such rights shall include, but not limited to, the City's option to withhold, up to any amounts due and owing under this contract, any funds owed to the City in accordance with City and/or State law. The City shall exercise its set-off rights in accordance with normal City practices, and, in cases of set-off pursuant to an audit, the finalization of such audit by the City, its representatives, or the State Comptroller.

4) Changed Conditions and Contract Modification

1. GOVERNMENT RULES AND REGULATIONS- Any contract or order resulting from this agreement affected by rules and regulations of the Government of the United States may be either modified to conform thereto or may be terminated without penalty to the Contractor, as shall be determined by the Commissioner in writing. Such modified contract or order shall be subject to audit by the Comptroller of the City of New York.

2. The Contractor is hereby advised that any contract modification, change order,

amendment, or extra work done in advance of the required City approvals for such work, including but not limited to the registration of the change order with the Office of the Comptroller, is done solely at the risk of the Contractor.

5) Prevailing Wage Rates

The Contractor's attention is drawn to the fact that the New York State Prevailing Wage Laws, Section 220 and/or 230, as applies herein, shall be strictly enforced. There are five requirements for full contractor compliance with the NYS Prevailing Wage Laws for its workers and its subcontractor's workers:

- I. Proper Payment involves paying a worker the prevailing wages, benefits and supplemental wages, required for the type of work performed. The Contractor shall be required, with each payment request, to submit this information in the format approved by the City of New York.
- II. Posting of the prevailing wages is required at the work site.
- III. A Sign-in Sheet must include the signature of every worker at the site for each day of work. The workers shall sign that they understand that project is a public works projects covered under NYS Law. The Contractor shall submit the daily sign-in sheet, on a daily basis, to the NYPD Project Manager, in the City approved format.
- IV. Each of the Contractor's workers shall be given an information card about the prevailing wage requirements. At the time of distribution, the contractor shall have each worker sign a statement certifying that the worker has been advised of the prevailing wage requirements.
- V. Identification Badges shall be worn on-site and shall indicate the worker's name, trade, and employer's name. The Contractor shall be responsible for the workers' and subcontractor's compliance with this requirement.

SECTION 2: NOTICE TO ALL PROSPECTIVE CONTRACTORS

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

ARTICLE I. M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned business enterprises (MBEs and WBEs) in City procurement. As stated in the Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the

procurement process, increasing competition for City business, and lowering contract costs. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services (DSBS) promulgated thereunder.

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

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

PART A

PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

1. The target subcontracting percentage applicable to this contract is set forth on Schedule A if this is a solicitation for a construction contract, and on a separate notice if this is a solicitation for professional services.

The “target subcontracting percentage” is the percentage of the total contract which Agency anticipates that the prime contractor for this contract would in the normal course of business award to one or more subcontractors for amounts under \$1 million. A prospective contractor may seek a full or partial pre-award waiver of the target subcontracting percentage in accordance with Local Law 129 and Part A, Section 9 below.

2. The participation goals established for this contract are set forth on Schedule A if this is solicitation for a construction contract, and on a separate notice if this is a solicitation for professional services.

Participation goal percentages are percentages of the total dollar value of all subcontracts under this Agreement for amounts under \$1 million.

3. If participation goals have been established for this contract, Contractor agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to subcontracts for amounts under \$1 million, Contractor shall be subject to the participation goals, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 10 below.

4. If participation goals have been established for this contract, a prospective contractor shall be required to submit with its bid or proposal, as applicable, a utilization plan indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under \$1 million; (c) in cases where the prospective contractor intends to award subcontracts for amounts under \$1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the time frames in which such work by MBEs and/or WBEs is scheduled to begin and end. In the event that this utilization plan indicates that the bidder or proposer, as applicable, does not intend to award the target

subcontracting percentage, the bid or proposal, as applicable, shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the target subcontracting percentage in accordance with Local Law 129 and Part A, Section 9 below.

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

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

7. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's utilization plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Contractor has obtained a modification of its utilization plan in accordance with Local Law 129 and Part A, Section 10 below.

8. Where a contractor utilization plan has been submitted, and the Contractor requests a change order the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

9. Pre-award waiver of target subcontracting percentage. Agency may grant a full or partial waiver of the target subcontracting percentage to a bidder or proposer, as applicable, who demonstrates—before submission of the bid or proposal—that it has legitimate business reasons for proposing the level of subcontracting in its utilization plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, has the capacity and the bona fide intention to perform the contract without any subcontracting, or to perform the contract without awarding the amount of subcontracts for under one million dollars represented by the target subcontracting percentage. In making such determination, Agency may consider whether the utilization plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the contract that it intends to subcontract.

10. Modification of utilization plans. The Contractor may request modification of its utilization plan after the award of this contract. Agency may grant such request if it determines

that the Contractor has established, with appropriate documentary and other evidence, that it made all reasonable, good faith efforts to meet the goals set by Agency for the contract. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- (a) The Contractor advertised opportunities to participate in the contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- (b) The Contractor provided notice of specific opportunities to participate in the contract, in a timely manner, to minority and women's business organizations;
- (c) The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the contract was solicited;
- (d) The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the contractor utilization plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- (e) The Contractor held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;
- (f) The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;
- (g) Timely written requests for assistance made by the Contractor to Agency's M/WBE liaison officer and to DSBS;
- (h) Description of how recommendations made by DSBS and Agency were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

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

11. If participation goals have been established for this contract, Agency shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

PART B

MISCELLANEOUS

1. The Contractor shall take notice that, if this solicitation requires the establishment of a contractor utilization plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the contractor utilization plan.
2. Directories of certified MBEs and WBEs are available on DSBS's website at <http://www.nyc.gov/html/sbs/html/mwbe.html> and at DSBS's office located at NYC Department of Small Business Services, 110 William Street, 7th Floor, New York, NY 10038.
3. DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.
4. Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

ARTICLE II. ENFORCEMENT

1. If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this contract and the agency may revoke such bidder's or proposer's prequalification status, if applicable.
2. Whenever Agency believes that the Contractor or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this contract that implements Section 6-129, including, but not limited to any contractor utilization plan, Agency shall send a written notice to the Contractor describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
3. In the event that the Contractor has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this contract that implements this Section 6-129, including, but not limited any contractor utilization plan, Agency may determine that one of the following actions should be taken:
 - (a) entering into an agreement with the Contractor allowing the Contractor to cure the violation;
 - (b) revoking the contractor's pre-qualification to bid or make proposals for future contracts;
 - (c) making a finding that the contractor is in default of the contract;
 - (d) terminating the contract;
 - (e) declaring the contractor to be in breach of contract;

(f) withholding payment or reimbursement;

(g) determining not to renew the contract;

(h) assessing actual and consequential damages;

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

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

(k) take any other appropriate remedy.

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

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

6. The Contractor's record in implementing its contractor utilization plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a contractor's compliance with a contractor utilization plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

ATTACHMENT B

Acknowledgment of Addendum PIN 056090000629 -- IATSASS

Instructions: Submit this Attachment with your Program Proposal

I, the undersigned, as an authorized representative of my company, acknowledge receipt and acceptance of the terms and conditions of the following addendum issued regarding PIN 056090000629 -- IATSASS:

Addendum # 1 (issued on): ____/____/____ Addendum #2 (issued on): ____/____/____

Addendum # 3 (issued on): ____/____/____ Addendum #4 (issued on): ____/____/____

Addendum # 5 (issued on): ____/____/____ Addendum #6 (issued on): ____/____/____

Addendum # 7 (issued on): ____/____/____ Addendum #8 (issued on): ____/____/____

Addendum # 9 (issued on): ____/____/____ Addendum #10 (issued on): ____/____/____

Approved by:

| | |
|--|--|
| Authorized Representative's Signature | |
| Date Signed | |
| Authorized Representative's Name (Print) | |
| Company Name | |
| Address | |
| City, State, Zip Code | |
| Telephone # | |
| Fax # | |
| Email address | |

Item Description---YEAR 1

| EXISTING VEHICLES: Price for Towing vehicles from College Point, Erie, Gowanus and SBMT | (A) | | | (B) | | | (C) | | | (D) | | |
|---|-------------------------|------------|------------|----------------------|------------|------------|-----------------------------|------------|------------|-------------------|------------|------------|
| | Tows from College Point | | | Tows from Erie Basin | | | Tows from Gowanus Tow Pound | | | Tows from SBMT | | |
| | QTY | Unit Price | Item Total | QTY | Unit Price | Item Total | QTY | Unit Price | Item Total | QTY | Unit Price | Item Total |
| 1a. VEHICLES UP TO AND INCLUDING 11,000 GVW | 600 | \$ | - \$ - | 1200 | \$ | - \$ - | 1250 | \$ | - \$ - | 950 | \$ | - \$ - |
| | Est One-Time Tows | | | Est One-Time Tows | | | Est One-Time Tows | | | Est One-Time Tows | | |
| 1b. VEHICLES OVER 11,000 GVW BUT NOT EXCEEDING 31,000 GVW | 2 | \$ | - \$ - | 2 | \$ | - \$ - | 2 | \$ | - \$ - | 2 | \$ | - \$ - |
| | Est One-Time Tows | | | Est One-Time Tows | | | Est One-Time Tows | | | Est One-Time Tows | | |
| 1c. VEHICLES OVER 31,000 GVW | 2 | \$ | - \$ - | 2 | \$ | - \$ - | 2 | \$ | - \$ - | 2 | \$ | - \$ - |
| | Est One-Time Tows | | | Est One-Time Tows | | | Est One-Time Tows | | | Est One-Time Tows | | |
| Grand Total for Item 1 (add the subtotals)-----> | Sub Total | \$ | - | Sub Total | \$ | - | Sub Total | \$ | - | Sub Total | \$ | - |

| | |
|------|--|
| \$ - | |
|------|--|

| | |
|--|-----------------------------------|
| 2. Ongoing Vehicle Tows -- it is anticipated that after the initial tow of existing vehicles (item 1) daily tows will originate from one NYC site--initially at the College Point Facility | Tows from Central NYPD Location |
| 2a. VEHICLES UP TO AND INCLUDING 11,000 GVW | 8910 \$ - \$ - Est Annual Tows |
| 2b. VEHICLES OVER 11,000 GVW BUT NOT EXCEEDING 31,000 GVW | 45 \$ - \$ - Est Annual Tows |
| 2c. VEHICLES OVER 31,000 GVW | 45 \$ - \$ - Est Annual Tows |
| YEAR 1 TOWING TOTAL | Year 1 Total \$ - |
| Year 2 Mark-up (+) or Mark-down (-) Percentage | Mark- Up/ or Mark Down: 0% |
| Year 2 Total based on the Mark-up/Mark-down % Multiply the Year 1 total by 1 + the Mark-up/Down Percentage for the Year 2 total | Year 2 Total \$ - |
| Year 3 Mark-up (+) or Mark-down (-) Percentage | Mark- Up/ or Mark Down: 0% |
| Year 3 Total based on the Mark-up/Mark-down % Multiply the Year 2 total by 1 + the Mark-up/Down Percentage for the Year 3 total | Year 3 Total \$ - |

| | |
|---|------|
| 2. ONGOING TOWING TOTAL: Add the Year 1, 2 and 3 totals) | \$ - |
|---|------|

| Item 3---Storage of Vehicles | (A) x Qty (DAYS) | (B) x # of Stored Vehicles/day | (C) = Unit Price | (D) = Item Total |
|---|---------------------|--------------------------------------|---------------------|---------------------|
| Daily Vehicle Rate -- Year 1 | 365 | | 5000 \$ | - \$ - |
| Daily Vehicle Rate -- Year 2 | 365 | | 5000 \$ | - \$ - |
| Daily Vehicle Rate -- Year 3 | 365 | | 5000 \$ | - \$ - |
| ITEM 3 THREE YEAR TOTAL -- (Add Column D) | | | \$ | - |

ITEM 4: Auctioning/Salvaging

| a. Fee for Auctioning Services--shall include all expenses and costs incurred by the Auctioneer to conduct the Auction: | | | | | |
|---|--------------|----|-------|------------|---|
| | (A) | x | (B) = | (C) | |
| | Est # of | | Daily | | |
| | Auction Days | | Fee | Item Total | |
| Year 1 | 126 | \$ | - | \$ | - |
| Year 2 | 126 | \$ | - | \$ | - |
| Year 3 | 126 | \$ | - | \$ | - |
| Item 4a Three Year Total | | | \$ - | | |

b. Commission of Vehicle Auction/Salvage

| | |
|--|------------------|
| Estimated Value of Auctions/Salvage -- 3 Years: | (B) |
| | \$ 10,800,000.00 |
| Enter the Commission Retained Percentage: | Commission 0% |
| (A) Total Sales Commission for the Contractor (Multiply the Est Auction/Salvage Value by the Commission %) | \$ - |
| (B) Total Estimated Amount Returned to the City of New York (Deduct the Est Auction Value by the (A) Total Sales Commission for the Contractor | \$ 10,800,000.00 |

| | |
|--|---------------------------|
| Grand Total (From the Worksheet above) | |
| One-Time Total for Item 1 | \$ - |
| Three Year Total for Item 2 | \$ - |
| Three Year Total for Item 3 | \$ - |
| Three Year Auction Fee & Total Return for Item 4 | \$ (10,800,000.00) |
| Grand Total Price Proposal | \$ (10,800,000.00) |

Attachment C Submitted by:

Company Name: _____

Authorized Representative (Print Name): _____

Authorized Representative's Signature: _____

Date Signed: _____



THE CITY OF NEW YORK

ATTACHMENT D--SCHEDULE B – Subcontractor Utilization Plan – Part I: Agency's Target**This page to be completed by contracting agency****Contract Overview**

Pin # _____ 056 09 0000 629 **FMS Project ID#:** _____
Project Title _____ Invoiced Auto Towing, Storage, Auction, and Salvage Services (IATSASS)
Contracting Agency _____ New York City Police Department
Agency Address _____ 51 Chambers Street **City** _____ New York **State** _____ NY **Zip Code** _____ 10007
Contact Person _____ Howard Babich **Title** _____ Associate Staff Analyst
Telephone/Fax # _____ (646) 610-5214/(646) 610-5224 **Email** _____ Howard.Babich@nypd.org

Project Description (attach additional pages if necessary)

Intake, store, and release up to 9,000 non-evidence vehicles per year, with an average daily inventory of up to 5,000 vehicles. Services will include towing vehicles from NYPD locations around NYC. Vendor will safeguard and follow requirements to manage up to 5,000 vehicles per year, including the salvage and auction of unclaimed vehicles and the return of claimed vehicles to their owners.

(1) ✓ Target Subcontracting Percentage

Percentage of total contract dollar value that agency estimates will be awarded to subcontractors in amounts under \$1 million for construction and professional services.

_____ **5%****Subcontractor Participation Goals**

Complete and enter total for each Construction or Professional Services, or both (if applicable)

| Group | Construction | | Professional Services | |
|----------------------------------|--------------|------------|-----------------------|--------------|
| Black American | Not | % | TBD* | % |
| Hispanic American | Applicable | % | TBD* | % |
| Asian American | | % | No Goal | |
| Caucasian Female | No Goal | | TBD* | % |
| Total Participation Goals | (2) | N/A | (3) | 30.5% |

* Note: The Total Participation Goals for construction subcontracts may be met by using Black American, Hispanic American or Asian American firms or any combination of such firms. The Total Participation Goals for professional services subcontracts may be met by using Black American, Hispanic American or Caucasian Female firms or any combination of such firms.

SCHEDULE B – Subcontractor Utilization Plan – Part II: Bidder/Proposer Subcontracting Plan

This page and the next (Part II herein) are to be completed by the bidder/proposer. NOTE: Bids/proposals which do not include a completed subcontractor utilization plan (Part II herein) will be deemed to be non-responsive, unless a full waiver of the target subcontracting percentage is granted (Part III herein).

Section I: Prime Contractor Contact Information

Tax ID # _____ FMS Vendor ID # _____
 Business Name _____ Contact Person _____
 Address _____
 Telephone # _____ Email _____

Section II: General Contract Information**1. Define the industry in which work is to be performed.**

- **Construction** includes all contracts for the construction, rehabilitation, and/or renovation of physical structures. This category does include CM Build as well as other construction related services such as: demolition, asbestos and lead abatement, and painting services, carpentry services, carpet installation and removal, where related to new construction and not maintenance.
- **Professional Services** are a class of services that typically require the provider to have some specialized field or advanced degree. Services of this type include: legal, management consulting, information technology, accounting, auditing, actuarial, advertising, health services, pure construction management, environmental analysis, scientific testing, architecture and engineering, and traffic studies, and similar services.

a. Type of work on Prime Contract (Check one):

- ☐ Construction
☐ Professional Services

b. Type of work on Subcontract (Check all that apply):

- ☐ Construction ☐ Other
☐ Professional Services

2. What is the expected percentage of the total contract dollar value that you expect to award to all subcontracts? _____ %**3. Will you award subcontract(s) in amounts below \$ 1 million for construction and/or professional services contracts within the first 12 months of the notice to proceed on the contract?**

☐ Yes ☐ No

Section III: Subcontractor Utilization Summary

IMPORTANT: If you do not anticipate that you will subcontract at the target level the agency has specified, because you will perform more of the work yourself, you must seek a waiver of the Target Subcontracting Percentage by completing p. 4).

| Step 1: Calculate the percentage (of your total bid) that will go towards subcontracts under \$1M for construction and/or professional services | Subcontracts under \$1M (4) (construction/professional services) | Total Bid/Proposal Value | Calculated Target Subcontracting Percentage |
|--|---|--------------------------|---|
| | \$ _____ | ÷ \$ _____ | x 100 = _____ % |
| <ul style="list-style-type: none"> • Subcontracts under \$1M (construction/professional services): Enter the value you expect to award to subcontractors in dollars for amounts under \$1 million for construction and/or professional services. This value defines the amount that participation goals apply to, and will be entered into the first line of Step 2. • Total Bid/Proposal Value: Provide the dollar amount of the bid/proposal. • Calculated Target Subcontracting Percentage: The percentage of the total contract dollar value that will be awarded to one or more subcontractors for amounts under \$1 million for construction and/or professional services. This percentage must equal or exceed the percentage listed by the agency on page 1, at line (1). | | | |
| <p>! Important: The "Calculated Target Subcontracting Percentage" MUST equal or exceed the Target Subcontracting Percentage listed by the agency on Page 1, Line (1) or the bid/proposal will be deemed non-responsive.</p> | | | |

SCHEDULE B – cont.**Step 2:**

Calculate value of subcontractor participation goals

Subcontracts under \$1M
(construction/professional services)

| | |
|---|--|
| <p>a. Copy value from Step 1, line (4) – the total value of all expected subcontracts under \$1M for construction and/or professional services</p> <p>b.</p> <ul style="list-style-type: none"> From line a. above, allocate the dollar value of "Subcontracts under \$1M" by Construction and Professional Services, If all subcontracts under \$1M are in one industry, enter '0' for the industry with no subcontracts. Amounts listed on these lines should add up to the value from line a. <p>c.</p> <ul style="list-style-type: none"> For Construction enter percentage from line (2) from Page 1. For Professional Services enter percentage from line (3) from Page 1. These Percentages must be copied from the Agency Plan, or the bid/proposal will be deemed non-responsive. <p>d.</p> | <p>Construction</p> <p>Professional Services</p> |
|---|--|

| | |
|---|--|
| <p>Subcontracts under \$1M by Industry \$ _____</p> <p>x _____ %</p> <p>Value of Total Participation Goals \$ _____</p> | <p>\$ _____</p> <p>x _____ %</p> <p>\$ _____</p> |
|---|--|

Step 3:

✓ **Subcontracts in Amounts Under \$1 M Scope of Work – Construction**

Enter brief description of type(s) of subcontracts in amounts under \$1M anticipated, by type of work, not by name of subcontractor

✓ **Subcontracts in Amounts Under \$1 M Scope of Work – Professional Services**

Enter brief description of type(s) of subcontracts in amounts under \$1M anticipated, by type of work, not by name of subcontractor

Section IV: Vendor Certification

I hereby 1) acknowledge my understanding of the M/WBE requirements as set forth herein and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder; 2) affirm that the information supplied in support of this subcontractor utilization plan is true and correct; 3) agree, if awarded this Contract, to comply with the M/WBE requirements of this Contract and the pertinent provisions of Local Law 129 of 2005, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this contract; and 4) agree, if awarded this contract, to make all reasonable, good faith efforts to attain the Target Subcontracting Percentage as specified by the Agency, and to solicit and obtain the participation of M/WBEs so as to meet the required Subcontractor Participation Goals.

Signature _____

Date _____

Print Name _____

Title _____

SCHEDULE B – PART III – REQUEST FOR WAIVER OF TARGET SUBCONTRACTING PERCENTAGE

Contract Overview

Tax ID # _____ FMS Vendor ID # _____

Business Name _____

Contact Name _____ Telephone # _____ Email _____

Type of Procurement ☐ Competitive Sealed Bids ☐ Other Bid/Response Due Date _____

PIN # (for this procurement) _____ Type of work on Prime Contract _____ Type of work on Subcontract (Check all that apply):

(Check one):

☐ Construction

☐ Construction

☐ Other

☐ Professional Services

☐ Professional Services

SUBCONTRACTING as described in bid/solicitation documents (Copy this % figure from Schedule B, Part I, line 1)

_____ % of the total contract value anticipated by the agency to be subcontracted for construction/professional services subcontracts valued below \$1 million (each)

ACTUAL SUBCONTRACTING as anticipated by vendor seeking waiver

_____ % of the total contract value anticipated in good faith by the bidder/proposer to be subcontracted for construction/ professional services subcontracts valued below \$1 million (each)

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

☐ Vendor does not subcontract construction/professional services, and has the capacity and good faith intention to perform all such work itself.

☐ Vendor subcontracts some of this type of work but at lower % than bid/solicitation describes, and has the capacity and good faith intention to do so on this contract.

☐ Other _____

References

List 3 most recent contracts/subcontracts performed for NYC agencies (if any) (Please provide name/phone of each reference.)

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

CONTRACT NO. _____ AGENCY _____ DATE COMPLETED _____

List 3 most recent contracts/subcontracts performed for other agencies/entities

(complete ONLY if vendor has performed fewer than 3 NYC contracts)

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

Manager at agency/entity that hired vendor (Name/Phone No.) _____

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

Manager at agency/entity that hired vendor (Name/Phone No.) _____

TYPE OF WORK _____ AGENCY/ENTITY _____ DATE COMPLETED _____

Manager at agency/entity that hired vendor (Name/Phone No.) _____

VENDOR CERTIFICATION: I hereby affirm that the information supplied in support of this waiver request is true and correct, and that this request is made in good faith.

Signature: _____

Date: _____

Print Name: _____

Title: _____

Shaded area below is for agency completion only

AGENCY CHIEF CONTRACTING OFFICER APPROVAL

Signature: _____

Date: _____

CITY CHIEF PROCUREMENT OFFICER APPROVAL

Signature: _____

Date: _____



The City of New York
Mayor's Office of Contract Services
Doing Business Accountability Project

ATTACHMENT E

Doing Business Data Form

| To be completed by the City Agency prior to distribution | | | |
|--|-------------------------------------|-----------------------------------|---|
| Agency: _____ | | Transaction ID: _____ | |
| Check One: | Transaction Type (check one): | | |
| <input type="checkbox"/> Proposal | <input type="checkbox"/> Concession | <input type="checkbox"/> Contract | <input type="checkbox"/> Economic Development Agreement |
| <input type="checkbox"/> Award | <input type="checkbox"/> Franchise | <input type="checkbox"/> Grant | <input type="checkbox"/> Pension Investment Contract |

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

Please return the completed Data Form to the City Agency that supplied it. Please contact the Doing Business Accountability Project at DoingBusiness@cityhall.nyc.gov or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

Section 1: Entity Information

Entity Name: _____

Entity EIN/TIN: _____

Entity Filing Status (select one):

- ☐ Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- ☐ Change from previous Data Form dated _____. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- ☐ No Change from previous Data Form dated _____. *Skip to the bottom of the last page.*

Entity is a Non-Profit: ☐ Yes ☐ No

Entity Type: ☐ Corporation (any type) ☐ Joint Venture ☐ LLC ☐ Partnership (any type)
☐ Sole Proprietor ☐ Other (specify): _____

Address: _____

City: _____ State: _____ Zip: _____

Phone : _____ Fax : _____

E-mail: _____

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

Section 2: Principal Officers

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

Chief Executive Officer (CEO) or equivalent officer☐ This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former CEO: _____ on date: _____

Chief Financial Officer (CFO) or equivalent officer☐ This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former CFO: _____ on date: _____

Chief Operating Officer (COO) or equivalent officer☐ This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

☐ This person replaced former COO: _____ on date: _____

Section 3: Principal Owners

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- ☐ The entity is not-for-profit ☐ There are no individual owners ☐ No individual owner holds 10% or more shares in the entity
☐ Other (explain): _____

Principal Owners (who own or control 10% or more of the entity):

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Principal Owners:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Section 4: Senior Managers

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

Senior Managers:

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

First Name: _____ MI: _____ Last: _____

Office Title: _____

Employer (if not employed by entity): _____

Birth Date (mm/dd/yy): _____ Home Phone #: _____

Home Address: _____

Remove the following previously-reported Senior Managers:

Name: _____ Removal Date: _____

Name: _____ Removal Date: _____

Certification

I certify that the information submitted on these four pages and _____ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.

Name: _____

Signature: _____ Date: _____

Entity Name: _____

Title: _____ Work Phone #: _____

Return the completed Data Form to the agency that supplied it.

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.

