

**CITY OF NEW YORK  
DEPARTMENT OF SANITATION**

**AGREEMENT TO HIRE  
EQUIPMENT WITH OPERATORS  
FOR SNOW REMOVAL EMERGENCIES  
FOR THE 2020-21, 2021-22, AND  
2022-23 WINTER SEASONS**

**PIN: 82721CC0003**

**Contents:**

**AGREEMENT TO HIRE EQUIPMENT WITH OPERATORS**

- EXHIBIT A – Scope of Services**
- EXHIBIT B – Payment Rates**
- EXHIBIT C – List of Equipment Offered Forms**
- EXHIBIT D – Hired Equipment Time Certificate Form**
- EXHIBIT E – Equipment Capacity Certificate Forms**
- EXHIBIT F – City Standard Contract Terms and Conditions**
- EXHIBIT G – Iran Divestment Act Compliance Rider**

**LAW DEPARTMENT LOG NOS. 2020-026563**

**APPROVAL AS TO FORM OF A CONTRACT  
BY STANDARD TYPE OF CLASS**

Contract: Agreement to Hire Equipment with Operators for Snow Removal  
Emergencies for the 2020-21, 2021-22, and 2022-23 Winter Seasons  
(PIN: 82721CC0003)

Pursuant to the powers vested in me by Section 394, Subdivision (b) of the New York City Charter, I hereby approve as to form and certify as to legal authority by standard type of class the annexed contract to be entered into by the Department of Sanitation on behalf of the City of New York. This approval is valid for a period of twelve (12) months from the date hereof and for a maximum of two hundred fifty (250) contracts.

The above approval is made on the express understanding that substantive language of the subject contracts will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the contracts require names, dates, dollar amounts and other similar details may be completed.

Dated:

Approved as to Form  
Certified as to Legal Authority



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

8/13/2020

**CITY OF NEW YORK  
DEPARTMENT OF SANITATION**

**AGREEMENT TO HIRE EQUIPMENT WITH OPERATORS  
FOR SNOW REMOVAL EMERGENCIES  
FOR THE 2020-2021, 2021-2022, AND 2022-2023  
WINTER SEASONS**

**This Agreement is** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by and between the City of New York (the “**City**”), acting by and through its Department of Sanitation (“**DSNY**”), located at 125 Worth Street, Room 710, New York, NY 10013,

and \_\_\_\_\_ (the “**Contractor**”),

with its principal offices located at \_\_\_\_\_.

**WITNESS:**

**WHEREAS**, during snow removal emergencies, DSNY needs to hire certain equipment with operators during the winter seasons identified above, to supplement its in-house and other contractual resources to deal with the effects of the snow;

**WHEREAS**, the Contractor is willing and able to provide certain items of equipment described in this Agreement, with equipment operators, to DSNY during snow removal emergencies under the terms of this Agreement for the rates set forth in the Agreement;

**WHEREAS**, the Contractor has submitted to DSNY all necessary documents establishing that it has such equipment under its control, that such equipment is suitable to be used in a snow emergency and that the Contractor has submitted the applicable City VENDEX forms; and

**WHEREAS**, DSNY agrees to pay the Contractor for the use of the equipment at the rates set forth in this Agreement;

**NOW THEREFORE**, the parties agree as follows:

**1.1 Parts of the Agreement**

1.1.1 This form of Agreement and all of its Exhibits:

- Exhibit A – Scope of Services
- Exhibit B – Payment Rates
- Exhibit C – List of Equipment Offered Forms
- Exhibit D – Hired Equipment Time Certificate Form
- Exhibit E – Equipment Capacity Certificate Forms

- Exhibit F – City Standard Service Contract Terms and Conditions
  - Exhibit G – Iran Divestment Act Compliance Rider
- 1.1.2 The preliminary information sent to prospective contractors with this Agreement and its Exhibits.
- 1.1.3 All completed and amended List(s) of Equipment Offered submitted by the Contractor.
- 1.1.4 In the event of any conflict between the provisions of Exhibit A, the Scope of Services, and Exhibit F, the City Standard Service Contract Terms and Conditions, the provisions of Exhibit A shall control.

## **1.2 Covered Services**

The Contractor agrees to perform all required services as set forth in the Scope of Services.

## **1.3 PASSPort Administrative Fees**

- 1.3.1 Prior to entering into the Agreement, the Department may request the City's Department of Investigation ("DOI") to conduct a Vendor Name Check on the proposed contractor.
- 1.3.2 If the proposed contractor is subject to the Vendor Name Check process, the PPB Rules at Section 2-08(f) provide that the fee for the administration of the PASSPort system (the "PASSPort Administrative Fee") is \$175.00 for contracts of an estimated value less than or equal to \$1,000,000 or \$350.00 for contracts of an estimated value of greater than \$1,000,000.
- 1.3.3 The Contractor is responsible for paying the PASSPort Administrative Fee if a Vendor Name Check is performed. The Department has the right to deduct the PASSPort Administrative Fee from payments it owes to the Contractor.

**IN WITNESS WHEREOF:** The Department’s Agency Chief Contracting Officer acting on behalf of the City, and the Contractor, have executed three original copies of this Agreement. One copy will remain with the Department, the second will be filed with the Comptroller, and the third will be delivered to the Contractor.

**THE CITY OF NEW YORK**  
acting by and through its Department of Sanitation

**By:** \_\_\_\_\_  
Agency Chief Contracting Officer

\_\_\_\_\_  
Date

\*\*\*\*\*

**ACKNOWLEDGMENT BY AGENCY CHIEF CONTRACTING OFFICER**

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_, before me personally came

\_\_\_\_\_ to me known and known to me to be the Agency Chief Contracting Officer of the Department of Sanitation of the City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Commissioner for the purpose therein mentioned.

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

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

**[CONTRACTOR’S SIGNATURE ON NEXT PAGE]**

Approved as to Form  
Certified as to Legal Authority

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

**THE CONTRACTOR**

\_\_\_\_\_  
(Name)

By: \_\_\_\_\_  
(Signature)

(Corporate Seal)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

[Affidavit on Next Page]

\*\*\*\*\*

**[FOR JOINT VENTURES ONLY:  
IF THE CONTRACTOR IS A JOINT VENTURE,  
EACH MEMBER OF THE JOINT VENTURE MUST SIGN THIS SIGNATURE PAGE AND THE  
FOLLOWING ACKNOWLEDGMENT PAGE INDIVIDUALLY.**

**A JOINT VENTURE SHOULD MAKE AS MANY COPIES OF  
THESE TWO PAGES AS NECESSARY.]**

**BIDDER AFFIDAVIT**

STATE OF \_\_\_\_\_

SS:

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, say:  
(Choose only one of the following options; check box and complete)

Corporate Bidder:

I am the \_\_\_\_\_ of the above-named corporation whose name is subscribed to and which executed the foregoing bid. I reside at \_\_\_\_\_ I have knowledge of several matters stated in the bid, and they are in all respects true.

Partnership Bidder:

I am a general partner of \_\_\_\_\_, the partnership described in and which executed the foregoing bid. I am duly authorized to execute this bid and the Contract on behalf of the partnership. I have knowledge of the several matters stated in the bid and they are in all respects true.

Individual Bidder:

I am the person described in and who executed the foregoing bid and the several matters stated in the bid are in all respects true, to my personal knowledge.

Other Entity:

I am the \_\_\_\_\_ of \_\_\_\_\_, the bidder that is described in and executed the foregoing bid, and am duly authorized to execute this bid and the Contract on its behalf. I have knowledge of the several matters stated in the bid, and they are in all respects true.

**NOTE:** If the Bidder is a Joint Venture, each member of the Joint Venture must sign a separate Bid Total and Signature Page, with an annexed Bidder Affidavit and Affirmation of Non-Debt

\_\_\_\_\_  
(Signature of the person who signed the bid)

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

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

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

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

**AFFIRMATION OF NON-DEBT (TAX AFFIRMATION)**

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

\_\_\_\_\_  
Full name of Bidder \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

**CHECK ONE BOX AND INCLUDE THE APPROPRIATE NUMBER:**

- A - Individual or Sole Proprietorship  
SOCIAL SECURITY NUMBER \_\_\_\_\_
- B - Partnership or other unincorporated organization  
EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_
- C - Corporation  
EMPLOYER IDENTIFICATION NUMBER \_\_\_\_\_
- D - Other (specify: \_\_\_\_\_)  
TAXPAYER IDENTIFICATION NUMBER \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print Name)  
\_\_\_\_\_  
(Title)

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

**If a corporation place seal here.  
Must be signed by an officer or duly authorized representative.**



**BIDDER'S CERTIFICATION OF COMPLIANCE WITH  
IRAN DIVESTMENT ACT**

Pursuant to General Municipal Law §103-g, which generally prohibits the City from entering into contracts with persons engaged in investment activities in the energy sector of Iran, the bidder/proposer submits the following certification:

[Please Check One]

**BIDDER'S CERTIFICATION**

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

Dated \_\_\_\_\_, New York

\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
*SIGNATURE*

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

\_\_\_\_\_  
*TITLE*

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

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

**CONTRACT AUTHORITY**

MAYOR'S CERTIFICATE NO: CBX \_\_\_\_\_ DATED \_\_\_\_\_

BUDGET DIRECTOR'S CERTIFICATE NO. \_\_\_\_\_ DATED \_\_\_\_\_

\*\*\*\*\*

**APPROPRIATION CERTIFICATE  
DEPARTMENT OF SANITATION**

In conformity with the provisions of Section 6-101 of the Administrative Code of the City of New York, it is hereby certified that the estimated cost of the work, materials and supplies required by the within contract, amounting to \$ \_\_\_\_\_ is chargeable to the budget of the Department of Sanitation as follows:

Agency: \_\_\_\_\_

Budget Code: \_\_\_\_\_

Unit of Appropriation \_\_\_\_\_

Object Code: \_\_\_\_\_

I further hereby certify that the specifications contained herein comply with the terms and conditions of the  
 **Capital Budget**  **Expense Budget**.

\_\_\_\_\_  
\_\_\_\_\_  
For the Department of Sanitation

\*\*\*\*\*

**COMPTROLLER'S CERTIFICATE**

The City of New York, \_\_\_\_\_, \_\_\_\_\_

In pursuance of the provisions of Section 6-101 of the Administrative Code of the City of New York, I hereby certify that there remains unapplied and unexpended a balance of the above mentioned fund applicable to this Contract sufficient to pay the estimated expense of executing this Contract, in the amount of:

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

\_\_\_\_\_  
Comptroller of the City of New York

## **CERTIFICATES OF INSURANCE**

### **Instructions to New York City Agencies, Departments, and Offices**

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.



**DSNY ADDRESS FOR  
INSURANCE-RELATED DOCUMENTS**

Wherever insurance documents, such as the Broker's Certificate, are to be sent to the DSNY Commissioner (e.g., notices, filings, or submissions), such documents shall be sent to the DSNY Commissioner's designee for insurance matters, the Agency Chief Contracting Officer (the "**ACCO**"), at the address set forth below.

**Kirk Eng  
Agency Chief Contracting Officer  
New York City Department of Sanitation  
44 Beaver Street, Room 203  
New York, New York 10004**

**(212) 437-5048**

**EXHIBIT A:**

**Scope of Services**

PIN: 82721CC0003

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

1: PURPOSE OF THE AGREEMENT .....	2
2: TERM OF THE AGREEMENT AND AUTHORITY TO ENTER INTO IT .....	2
3: DEFINITIONS .....	2
4: GENERAL EQUIPMENT AND OPERATOR REQUIREMENTS .....	3
5: PERFORMANCE OF THE SERVICES.....	5
5.1 THE DEPARTMENT’S INITIAL REQUEST FOR EQUIPMENT .....	5
5.2 THE DEPARTMENT’S RIGHT TO DIRECT THE MANNER OF PERFORMANCE .....	5
6: PAYMENT .....	7
6.1 APPLICATION OF HOURLY PAYMENT RATES.....	7
6.2 GUARANTEED MINIMUM PAYMENT WHEN EQUIPMENT REPORTS READY FOR WORK AS DIRECTED.....	7
6.3 ADDITIONAL COMPENSATION.....	8
A. TOLLS.....	8
B. RELOCATION FROM ONE WORK LOCATION TO ANOTHER.....	8
C. TRANSPORT ALLOWANCES AT THE BEGINNING AND END OF A SERVICE PERIOD.....	8
6.4 DEDUCTIONS FROM WORKING TIME .....	9
6.5 INVOICE SUBMISSION PROCEDURE.....	9
7: MEASUREMENT OF EQUIPMENT .....	10
8: EQUIPMENT SPECIFICATIONS.....	11
8.1 DUMP TRUCKS, TRACTOR-TRAILERS, & TRUCKS WITH ROLL-ON, ROLL-OFF CONTAINERS.....	11
8.2 FRONT END LOADERS, BACKHOES, & EXCAVATORS.....	12
8.3 BULLDOZERS.....	13
8.4 SKID-STEERS .....	13
8.5 SNOW MELTERS .....	13
8.6 BUSES (15 PASSENGER).....	14
8.7 BUSES (40 PASSENGER) .....	14
8.8 MISCELLANEOUS TOWING VEHICLES.....	15
8.9 PICK-UPS WITH PLOWS.....	15
9: GENERAL PROVISIONS.....	16
10: INSURANCE REQUIREMENTS.....	17
10.1 MINIMUM LIMITS AND SPECIAL CONDITIONS.....	17

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

**1. PURPOSE OF THE AGREEMENT**

- 1.1 This Agreement enables the Department to engage Equipment and Operators from the Contractor as necessary to cope with a Snow Removal Emergency in the City. The Department does not guarantee any minimum amount of work to the Contractor under this Agreement (except, as set forth in Section 6.2, below, once a Work Order has been issued to the Contractor). The Department may engage as many contractors as it determines, in its sole discretion, to be necessary to provide Equipment and Operators to cope with a Snow Removal Emergency.

**2. TERM OF THE AGREEMENT AND AUTHORITY TO ENTER INTO IT**

- 2.1 This form of Agreement covers Snow Removal Emergencies during the 2020-2021, 2021-2022, and 2022-2023 winter seasons (with each “winter season” commencing on October 1<sup>st</sup> and ending on April 30<sup>th</sup> of the following year). Once a signed copy of the Agreement has been registered with the City Comptroller, it will be effective in accordance with Section 2.2, below, during any subsequent Snow Removal Emergency declared during that same winter season.
- 2.2 This Agreement is entered into by the City in accordance with Section 3-06 of the PPB Rules and it will be effective only during Service Periods following Snow Removal Emergencies declared under that Section.

**3. DEFINITIONS**

- 3.1 In addition to the defined terms contained in Section 1.01 of **Exhibit F** to the Agreement, the following terms are used in this Scope of Services and the Payment Rate Chart (**Exhibit B** to the Agreement), as defined below:

**Priority Contractors.** Contractors who have, prior to a declaration of a Snow Removal Emergency: (1) signed an Agreement; (2) submitted fully completed PASSPort disclosure(s) as applicable; and (3) had their qualifications and insurance reviewed and approved by the City.

**District.** One of fifty-nine sanitation districts into which the City is divided. Districts are subdivided into sections.

**District Garage.** A Department garage to which the Contractor is directed in a Work Order to deliver its Equipment.

**Equipment.** Any equipment of the types listed in Article 8 of this Scope of Services, *i.e.*, dump trucks; front end loaders; excavators; backhoes; miscellaneous towing vehicles; bulldozers; skid-steers; snow melters; pick-ups with plows; tractor-trailers; or trucks with roll-on, roll-off containers.

**Equipment Capacity Certificate.** One of two Department forms, samples of the current versions of which are annexed as **Exhibit E** to the Agreement, that are used to record the measurements of the capacity of hired trucks, trailers, and containers and of the buckets on hired front end loaders, backhoes, and excavators.



**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

**Hired Equipment Time Certificate.** The Department's form, a sample of the current version of which is attached to the Agreement as **Exhibit D**, used to record work time and deductible time for each item of Equipment for each shift.

**List of Equipment Offered.** Any of the Department's Forms DS1621A through DS1621G, samples of the current versions of which are attached to the Agreement as **Exhibit C**.

**Operator.** A person employed by the Contractor who drives an item of Equipment, operates any part of the Equipment, or drives a vehicle transporting an item of Equipment to a Work Location.

**Payment Rates.** The hourly rates set forth in **Exhibit B** at which the Department will pay the Contractor for the Working Time of each item of Equipment, covering the hire of the Equipment as well as the services of the Operators.

**Service Period.** The time period starting from the approval of the Department's declaration of a Snow Removal Emergency and running until the Department notifies the Contractor, in its discretion, that it no longer requires its Equipment.

**Snow Removal Emergency.** A condition resulting in the issuance of declaration by the Department under Section 3-06 of the PPB Rules that a procurement emergency exists requiring the use of Contractors hired under this Agreement to supplement its in-house and any other contractual snow removal resources. The approval of this declaration by the City Comptroller and Corporation Counsel marks the beginning of a Service Period.

**Work Location.** A place designated by the Department where the Contractor's services will be rendered. The Work Location may be a specific site, a section of a District, a list of streets, or otherwise as identified by the Department.

**Work Order.** A communication from the Department to the Contractor directing the Contractor to provide its Equipment and Operators under this Agreement. The Department may send a written Work Order by facsimile, by e-mail, or by overnight delivery service, or may issue an oral Work Order on the telephone or in person. A log number will constitute proof of the issuance of an oral Work Order.

**Working Time.** The period of time, measured in fifteen-minute increments, that an item of Equipment is actually working, as determined under Article 6 of this Scope of Services and recorded by Department representatives on a Hired Equipment Time Certificate.

**4. GENERAL EQUIPMENT AND OPERATOR REQUIREMENTS**

4.1 The Contractor's Equipment must be:

- A. registered with the Department of Motor Vehicles of the State of New York or the appropriate agency of another state, properly inspected and tagged with license plates as required to authorize its use on the streets of the City;

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

- B. fully insured as specified in the insurance requirements (set forth in Section 10.1, below, and in Article 7 and Schedule A of **Exhibit F**);
  - C. owned or leased by the Contractor for at least thirty days prior to any Service Period during which it will be used (proof of ownership or lease must be provided on demand);
  - D. in satisfactory operating condition and mechanically safe for its intended purpose, as determined by the Department, in its sole discretion;
  - E. subject to initial inspection and to re-inspection at all times to determine compliance with the requirements of the Agreement;
  - F. maintained, fueled, and repaired at the Contractor's own expense; and
  - G. controlled at all times by the Contractor and its employees.
- 4.2 Each Operator must be trained and hold any required license to drive and operate the item of Equipment to which he or she has been assigned, and must operate the Equipment safely, efficiently, and in compliance with all applicable Laws. Proof of license must be provided upon demand by the Department.
- 4.3 The Contractor must, before signing the Agreement, complete and submit to the Department a list of all Equipment offered for hire on the appropriate List of Equipment Offered form(s), samples of which are attached to this Agreement as **Exhibit C**. Revised List(s) of Equipment Offered should be submitted to the Department, if any of the information changes, by mailing to:
- New York City Department of Sanitation  
Attn: Bureau Contracting Officer  
Bureau of Cleaning and Collection  
125 Worth Street, Room 823-D  
New York, New York 10013
- A. Each item of Equipment to be supplied under this Agreement must be identified on a List of Equipment Offered prior to any Service Period during which it is used. All such completed forms will become part of this Agreement.
  - B. The license plate and Vehicle Identification Number ("VIN") for each item of Equipment on the list must correspond with its state registration.
- 4.4 When appropriate or when so directed by the Department, each item of Equipment and any of the Contractor's transport vehicles carrying the Equipment to and from Work Locations must use skid chains to provide traction. In addition, the Equipment must be adequately illuminated to be visible during snowfall and while performing services.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

- 4.5 When it begins its first shift at a District Garage in response to a Work Order, the Contractor must present its Equipment to the Department to measure its capacity as provided in Article 7 of this Scope of Services, below.

**5. PERFORMANCE OF THE SERVICES**

**5.1 THE DEPARTMENT'S INITIAL REQUEST FOR EQUIPMENT**

- A. Priority Contractors should be available by telephone 24 hours a day during the winter seasons. After its declaration of a Snow Removal Emergency, the Department may, if the Contractor agrees to perform services hereunder, issue a Work Order to the Contractor to begin providing services at the Work Location and time the Department requires.
1. The Department will direct the Contractor as to the work to be completed, the sequence of the work, and the manner in which the work must be carried out.
  2. The Work Order will advise the Contractor of the location of the District Garage to which the Equipment is assigned. After the Contractor reports for work with the assigned Equipment, the District Garage will assign the Equipment to a specific Work Location. Although the Contractor may have indicated a preference for a certain borough or District, the Department reserves the right to assign the Contractor's Equipment to the District and section where the Department needs the Equipment. Once a Work Order is issued, the Contractor may not refuse to report to the District or section Work Location where it has been assigned. Failure to report to the assigned Work Location will be deemed a material breach of this Agreement.

**5.2 THE DEPARTMENT'S RIGHT TO DIRECT THE MANNER OF PERFORMANCE**

- A. The Department, in its discretion, may direct the Contractor to perform services under this Agreement in any of the five boroughs of the City, in any District, and at any Work Location. The Contractor agrees to follow the Department's directions and to instruct its Operators to comply with all orders from the Department and to remain at a Work Location until the Department directs them to remove the Equipment.
- B. The Department will designate the starting and ending time for each shift. Depending on the snow conditions, the Department may determine that services should be performed in 8-hour shifts or longer shifts of up to 12 hours in length.
- C. The Department may require the Contractor to work any 8-hour or longer shift, day, night or a combination of day and night. The Department will not pay any compensation beyond the applicable Payment Rates shown in **Exhibit B** and any additional compensation applicable under Section 6.3.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

- D. Unless the Department directs otherwise, eight-hour shifts will begin at 7:00 a.m., 4:00 p.m., and 12:00 a.m. Twelve-hour shifts will generally begin at 7:00 a.m. and 7:00 p.m. The Department may direct different starting and ending times, in its sole discretion.
  - E. For each shift, the Department and the Contractor will agree as to the duration of meal periods. Meal periods shall not exceed one half-hour. Neither meal periods nor break periods will be compensated by the Department, and they will be deducted from working time on the Hired Equipment Time Certificates under Section 6.4, below.
  - F. The Department will specify the quitting time for each shift, which may occur before 8 hours have elapsed if further services are not needed. The Contractor's Operators must not leave the Work Location before the end of a shift unless the Department authorizes them to do so.
  - G. Following the end of a shift, the Department will enter the actual quitting time and sign the Hired Equipment Time Certificates. The Contractor's copy may be picked up at the District Garage 24 hours after the end of the shift.
  - H. The Contractor's Equipment may not be stored on City property. The Contractor is solely responsible for the security of its Equipment at all times.
- 5.3 If the Department requires any item of Equipment for the next shift or day, the Department will notify each Contractor by telephone, e-mail, or fax at one of the numbers it has supplied. The Contractor is solely responsible for providing this information to its Operators. Alternatively, a Department representative at the District Garage may, instead of dismissing the Equipment, notify the Operator that the Equipment should return for a specified additional shift, and in such a case, such oral notification to the Operator will be deemed adequate notification to the Contractor. The guaranteed minimum payment described in Section 6.2, below, does not apply to any shift after the first shift for which the Contractor is issued a Work Order during a Service Period.
- 5.4 The Department may make a determination at any time (including after the Equipment has begun work) that a particular item of Equipment is not able to perform the service for which it is intended, or is not mechanically safe, and direct the Contractor to discontinue using the Equipment under the Agreement. The Department's determination that the Equipment is unsatisfactory or mechanically unsafe will be final and binding upon the Contractor.
- 5.5 The Department, in its sole discretion, may determine whether an item of Equipment is being operated in a safe and appropriate manner. If it determines that an Operator is operating the Equipment in an unsatisfactory manner, the Department may direct the Operator to stop working. Any such determination will be final and binding upon the Contractor.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

**6. PAYMENT**

**6.1 APPLICATION OF HOURLY PAYMENT RATES**

- A. The Hired Equipment Time Certificate signed by a Department representative for each shift worked will be the record upon which the Department will calculate the hours worked by an item of Equipment and its Operator(s).
- B. The Department will pay the Contractor at the Payment Rates shown in **Exhibit B** for the 2020-21, 2021-22, and 2022-23 winter seasons. These Payment Rates include rate increases of 2% (not compounded) for both the 2021-22 and 2022-23 winter seasons, as detailed in **Exhibit B**.
- C. The Department will measure Working Time in fifteen-minute periods.
- D. The City agrees to pay, and the Contractor agrees to accept, the following as full payment for all services under this Agreement:

<b>Full Payment for All Services and Equipment Provided under this Agreement</b>						
=						
<b>The Payment Rate for the item of Equipment provided in Section 6.1(B)</b>	X	<b>The number of hours worked, as shown on the Hired Equipment Time Certificate, for the item of Equipment</b>	+	<b>Additional Compensation as described in Section 6.3</b>	-	<b>Any applicable deduction as described in Section 6.4</b>

- E. If the last Working Time period for an item of Equipment is less than fifteen minutes:
  - 1. The Department will not pay the Contractor for a partial Working Time period of less than ten minutes.
  - 2. The Department will pay the Contractor for a quarter of an hour if a partial Working Time period is ten minutes or more.
- F. The full payment amount described in Section 6.1(D) is for all of the Contractor's services and expenses. The Department will not pay the Contractor any additional compensation that is not explicitly provided for in Section 6.2 or Section 6.3, below.

**6.2 GUARANTEED MINIMUM PAYMENT WHEN EQUIPMENT REPORTS READY FOR WORK AS DIRECTED**

- A. If the Department has issued a Work Order for an item of Equipment, the Department will pay the Contractor for a full 8-hour shift whether the Department assigns the item of

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

Equipment to work the full shift or not, provided that both of the following conditions are met:

1. The necessary Operator(s), with the Equipment, reported for work no later than fifteen minutes after the starting time fixed for the shift; and
  2. The Equipment and the Operator(s) are satisfactory to the Department and available for work until dismissed by the Department.
- B. This guaranteed minimum payment, as described in (A), above, applies only to the first shift assigned to the item of Equipment during a particular Service Period. If the Contractor accepts the assignment of additional shifts, the item of Equipment may be dismissed after less than 8 hours from the commencement of the shift, and the Contractor will only be paid for actual Working Time. (See Sections 5.2(F) and 5.3, above.)

**6.3 ADDITIONAL COMPENSATION**

A. TOLLS

1. If the Department directs the Contractor to move from one Work Location to another, and this move results in the Contractor paying a bridge, ferry, or tunnel toll, the Department will reimburse the Contractor for the toll.
2. The Department will not pay the Contractor for bridge, ferry, or tunnel toll charges that it incurs for an item of Equipment: (a) before it is initially presented to begin work; (b) after its work is completed; or (c) when the Contractor chooses to move the Equipment without being directed by the Department to do so.

B. RELOCATION FROM ONE WORK LOCATION TO ANOTHER

1. If the Department directs the Contractor to move an item of Equipment to another Work Location during a shift, the Department will pay the Contractor for the non-working time required to relocate the Equipment at the applicable Payment Rate shown on **Exhibit B**.
2. If the Department directs the Contractor to move an item of Equipment to a different Work Location between shifts, the Department will not pay the Contractor for the time required to relocate the Equipment.

C. TRANSPORT ALLOWANCES AT THE BEGINNING AND END OF A SERVICE PERIOD

1. Transport allowances will be paid in accordance with this Subsection C at the Payment Rates shown on **Exhibit B**, in addition to the Working Time for the item of Equipment, at the beginning of the first shift worked during a Service Period, and at the end of the last full or partial shift for the Service Period.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

2. For a **pneumatic tire-type front end loader, excavator, or backhoe**, the Department will pay a one-hour initial transport allowance and a one-hour dismissal transport allowance.
3. For a **crawler-type front end loader, excavator, or backhoe**, the Department will pay a two-hour initial transport allowance and a two-hour dismissal transport allowance.
4. For a **bulldozer**, the Department will pay a three-hour initial transport allowance and a three-hour dismissal transport allowance.
5. The Department will not pay any transport allowance for dump trucks, tractor-trailers, trucks with roll-on/roll-off containers, miscellaneous towing vehicles, skid-steers, pick-ups, or snow melters.
6. The initial and dismissal transport allowances described in (2) – (4), above, will be paid only once for each item of Equipment during a Service Period, unless the Department recalls an item of Equipment after dismissing it by issuing a new Work Order. In such a case, the Department will pay a second initial and dismissal transport allowance if the item of Equipment had actually been removed from the last assigned Work Location before the recall.

**6.4 DEDUCTIONS FROM WORKING TIME**

- A. Except for the situation described in Section 6.2, above, or if caused by the fault of the Department, the Department will not pay for time during a shift when the Equipment does not operate, including, but not limited to, non-operation attributable to: (1) meal or break periods; (2) loitering of Operators; (3) mechanical or tire problems, including problems due to the Contractor's failure to fuel or service the Equipment; (4) departure from a Work Location before the end of a shift; and (5) the Department's stop-work determination under Sections 5.4 or 5.5, above. Any such non-working time will be deducted by the Department on the Hired Equipment Time Certificate from the applicable shift.
- B. The Department will not pay the Contractor when Equipment arrives for work on days or shifts when it has not been specifically requested in a Work Order.

**6.5 INVOICE SUBMISSION PROCEDURE**

- A. In order to receive payment for services rendered, the Contractor must prepare and submit invoices as set forth in this Section. Any questions concerning the requirements of this Section may be directed to the Department's Division of Audit and Accounts at 646-885-0810.
- B. Each invoice itself must provide:

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

1. the date(s), shift(s), and the number of hours worked by each item of Equipment, along with the Certificate Number(s) of the applicable Hired Equipment Time Certificate(s);
  2. the Payment Rate from **Exhibit B** for each item of Equipment;
  3. the details of any Additional Compensation being sought under Section 6.3 (including receipts for any tolls for which reimbursement is sought); and
  3. the Contractor's DSNY-assigned index number (as noted on the Hired Equipment Time Certificate(s)).
- C. Invoices should be submitted within thirty days after the end of any Service Period to:
- New York City Department of Sanitation  
Bureau of Fiscal Services  
Division of Audit and Accounts  
59 Maiden Lane, 5<sup>th</sup> Floor  
New York, New York 10038
- D. Invoices cannot be processed for payment until the required number of copies of the duly signed Agreement have been submitted to the Department.
- E. If the Contractor believes a payment that the Department has made is incorrect, the Contractor must present a written dispute to the Agency Head as set forth in Section 12.03(D) of **Exhibit F** to this Agreement within 30 days of the date of payment. Failure to timely file a dispute as mandated by that Section shall constitute a waiver by the Contractor of its claim.

**7. MEASUREMENT OF EQUIPMENT**

- 7.1 When an item of Equipment works its first shift during any Service Period, the Department will inspect and measure it. The Department's measurement of the capacity of the item will be the basis for payment under the Agreement and will take precedence over any other type of measurement, including the manufacturer's rated capacity for the Equipment.
- 7.2 Based on its inspection, the Department will prepare an Equipment Capacity Certificate for each item of Equipment. Samples of the current versions of the Department's forms of Equipment Capacity Certificates are attached as **Exhibit E** to the Agreement.
- 7.3 The Department will place on each item of Equipment a numbered placard bearing its: (a) capacity in cubic yards as measured by the Department; (b) manufacturer and model; (c) VIN; and (d) license number. The placard must be placed in the front window of the item of Equipment while it is performing services under the Agreement.



**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

- 7.4 Any changes to the Equipment that are made after the initial measurement must be reported by Contractor to the District Garage. Such changes might include, but are not necessarily limited to, changes to the:
- A. vehicle identification number;
  - B. capacity of a body of a dump truck;
  - C. size of a bucket of a front end loader, backhoe, or excavator;
  - D. rated draw-bar horsepower of a bulldozer; or
  - E. weight of a miscellaneous towing vehicle.
- 7.5 The Department may re-examine an item of Equipment and issue a revised Equipment Capacity Certificate if any of the following occur:
- A. the Department receives notice of a change;
  - B. the item of Equipment is sent to another District Garage; or
  - C. the Department's representatives observe a change or suspect that the capacity of an item of Equipment has been diminished in any manner without notice to DSNY after it was measured.
- 7.6 The Contractor will be paid for an entire Service Period at the lowest capacity measured by the Department during that Service Period.
- 7.7 No dispute may be raised under the procedure set forth in Section 12.03 of **Exhibit F** based on discrepancies between two or more measurements of Equipment capacity made by the Department unless the matter was raised with a Department representative before the Equipment left the last assigned Work Location. The Department representative at such Work Location shall note any measurement dispute raised by the Contractor in the "Remarks" section of the Equipment Capacity Certificate.

**8. EQUIPMENT SPECIFICATIONS**

**8.1 DUMP TRUCKS, TRACTOR TRAILERS, AND TRUCKS WITH ROLL-ON, ROLL-OFF CONTAINERS**

- A. MINIMUM REQUIREMENTS
  - 1. Must be of the back-dumping type.
  - 2. Must be not less than 14,000 pounds gross vehicle weight, as verified by the state registration certificate.
  - 3. Must have a body capacity of at least 14 cubic yards, as measured by the Department.
  - 4. Must have a body height of not more than 10 feet, 9 inches, above the ground.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

5. Must have a hinged tailgate (unless the Department determines that a particular type of different tailgate does not interfere with speedy and easy dumping of loads).
6. Must have a body structure with all permanent sides (not to include wooden sides), and of uniform height on all three sides other than the tailgate end.

**B. USE OF EQUIPMENT**

To haul and rapidly unload snow and ice at DSNY-identified disposal points.

**C. MEASUREMENT OF CAPACITY**

Will be done as shown on Form DS 1691 contained in **Exhibit E** to the Agreement. If the tailgate end is not built up to the height of the other three sides, capacity will be determined as if the tailgate end were built up to the height of the other three sides, and then 25% of that theoretical capacity will be deducted.

**8.2 FRONT END LOADERS, BACKHOES, & EXCAVATORS**

**A. MINIMUM REQUIREMENTS**

1. May have gasoline or diesel engines.
2. May have crawler tracks if the Department deems it best for a particular work assignment.
3. Must have a bucket capacity of at least one-half of a cubic yard, as measured by the Department.
4. Front end loaders must have a minimum height with bucket in dumping position from ground to cutting lip of ten feet, nine inches, when used for loading snow (except that hire of a front end loader with lesser dumping height may be authorized in a particular instance for piling snow to clear snow drifts).
5. Must have maneuverability and power to break any salt encrustation during loading operations.

**B. USE OF EQUIPMENT**

To pile, clear, and load snow and ice from City streets.

**C. MEASUREMENT OF CAPACITY**

The Department will determine bucket capacity by using a **struck level basis of measurement** (not a "heaping" basis of measurement). The Department's measurement

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

of capacity will be final and binding on the Contractor.

**8.3 BULLDOZERS**

A. MINIMUM REQUIREMENTS

1. Tractors must be of the crawler type, either gasoline or diesel engine powered, and have either straight or angling blades as recommended by the manufacturer for use with that model of Equipment.
2. Must have not less than 45 rated draw-bar horsepower, as determined by the manufacturer's model number.

B. USE OF EQUIPMENT

To plow, clear, and pile snow and ice from the City streets.

**8.4 SKID-STEERS**

A. MINIMUM REQUIREMENTS

1. May have gasoline or diesel engine.
2. Must be equipped with a bucket.
3. Must have not less than 800 pound rated operating capacity with a minimum of 25 horsepower.

B. USE OF EQUIPMENT

To clear accumulated snow from bus stops, crosswalks, fire hydrants, and other limited access areas.

**8.5 SNOW MELTERS**

A. MINIMUM REQUIREMENTS

1. Must be diesel engine powered and be mounted on a trailer.
2. Must be able to melt a minimum of at least 60 tons of snow and ice per hour based on a density of 30 pounds per cubic foot.
3. The Contractor must supply a vehicle to transport each snow melter to Work Locations specified by the Department.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

- 4. The Contractor must supply at least one snow melter Operator with each snow melter.

**B. USE OF EQUIPMENT**

To melt accumulated snow on City streets during and after snowstorms.

**C. DETERMINING CAPACITY**

Manufacturer's model number will be used to determine the capacity of snow melters.

**8.6 BUSES (15 PASSENGER)**

**A. MINIMUM REQUIREMENTS**

- 1. Engine: Gasoline or Diesel
- 2. Fuel Tank: 33 or 40 Gallons
- 3. Horsepower: 255-324
- 4. Gross Vehicle Weight Rating ("GVWR"): Up to 10,100 lbs.

**B. USE OF EQUIPMENT**

To pick up laborers and move them to different locations to assist with shoveling snow.

**C. CAPACITY**

Up to 20 passengers.

**8.7 BUSES (40 PASSENGER)**

**A. MINIMUM REQUIREMENTS**

- 1. Engine: Gasoline or Diesel
- 2. Fuel Tank: 60 or 100 Gallons
- 3. Horsepower: 200-260
- 4. GVWR: Up to 33,000 lbs.

**B. USE OF EQUIPMENT**

To pick up laborers and move them to different locations to assist with shoveling snow.

**C. CAPACITY**

Up to 78 passengers.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

**8.8 MISCELLANEOUS TOWING VEHICLES**

**A. MINIMUM REQUIREMENTS**

1. May have gasoline or diesel engine.
2. May include:
  - a. light duty wreckers
  - b. medium duty wreckers
  - c. heavy duty wreckers
  - d. car carriers
3. Must be of not less than 4,000 pounds gross vehicle weight, which will be verified by the State registration certificate for the vehicle.
4. Must have sufficient power to lift and tow various passenger cars or other motor vehicles from snow banks, streets, or intersections.
5. The Contractor must supply at least one qualified Operator with each vehicle.
6. Vehicles and Operators must comply in all respects with Title 20 of the City Administrative Code, Chapter 2, Subchapter 31, with respect to the licensing of towing businesses, companies, and operators by the City's Department of Consumer Affairs.

**B. USE OF EQUIPMENT**

To move vehicles parked on City streets or blocking streets and intersections during and after snowstorms.

**8.9 PICK-UPS WITH PLOWS**

**A. MINIMUM REQUIREMENTS**

1. Must be between 16,000 and 25,000 pounds gross vehicle weight, as verified by the state registration certificate.
2. Must be equipped with a plow nine to eleven feet wide.
3. Plow must be no more than 30 inches high.
4. Plow must articulate (i.e., it must be a "PRP," or power reversible plow).
5. Plow must be capable of being set with its cutting edge striking the ground.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**SCOPE OF SERVICES**

---

**B. USE OF EQUIPMENT**

To clear accumulated snow from City streets.

**9. GENERAL PROVISIONS**

- 9.1 The Contractor must send the Department notice of any change to its address, facsimile number, e-mail address, or telephone number, to the attention of:

New York City Department of Sanitation  
Attn: Bureau Contracting Officer  
Bureau of Cleaning and Collection  
125 Worth Street, Room 823-D  
New York, New York 10013

- 9.2 In selecting Contractors to perform services during a Snow Removal Emergency, the Department will contact Priority Contractors first. However, the Department may enter into Agreements with Contractors that are not Priority Contractors if the Department estimates that the Snow Removal Emergency requires more equipment than is available from Priority Contractors.
- 9.3 No subcontracting is permitted under this Agreement.
- 9.4 By signing this Agreement, the Contractor's authorized signatory warrants that he or she has read and understands this Agreement and its terms and conditions, understands the Scope of Services and shift requirements, and accepts the role of the Department in determining how much work the Contractor will perform. The Contractor agrees that it will have no claim against the City, the Department, or its officials or employees, including, but not limited to, claims for loss of profits, loss of business opportunity, and for actual or consequential damages, which may result from the Department's exercise of its discretion under this Agreement.
- 9.5 The Department has the sole right to determine whether the Contractor's services meet its operational requirements and the requirements of the Agreement, and may terminate this Agreement if it determines, in its sole judgment, that the Contractor's services do not meet such requirements.
- 9.6 The Contractor agrees to use only Operators that are, in the Department's sole judgment, competent, efficient, and courteous to Department representatives and to the public, and to remove any Operator if directed to do so by the Department and replace that Operator with one that the Department deems satisfactory, in its discretion.
- 9.7 Nothing contained in this Agreement precludes the Contractor from signing this Agreement and bidding on any other contract that the Department may issue for the plowing and/or removal of snow and ice in the City (a "Requirements Contract"). However, a Contractor that is awarded a Requirements Contract will be required to perform as directed under that contract, and may not accept any Work Orders under this Agreement unless such additional work will not interfere with its ability to satisfy its obligations under the Requirements Contract.

**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

---

**SCOPE OF SERVICES**

---

**10. INSURANCE REQUIREMENTS**

**10.1 MINIMUM LIMITS AND SPECIAL CONDITIONS**

- A. In compliance with all of the terms and conditions included in Article 7 of **Exhibit F**, the following types of insurance will be required from the Contractor, with the minimum limits and special conditions as stated for each:
1. **Commercial General Liability:** \$1,000,000 per occurrence, \$2,000,000 aggregate (applicable separately to this Agreement), naming as an additional insured “the City of New York, including its officials and employees”;
  2. **Workers’ Compensation:** with statutory limits per New York State law without regard to jurisdiction;
  3. **Disability Benefits Insurance:** with statutory limits per New York State law without regard to jurisdiction;
  4. **Employer’s Liability:** with statutory limits per New York State law without regard to jurisdiction; and
  5. **Comprehensive Business Auto Coverage:** \$1,000,000 per accident.
- B. Every Certificate of Insurance must be accompanied by either a certification by the broker in the form set forth in the Agreement (following page 8), or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, insurance binders are acceptable.
- C. All insurance and insurance claim-related documents that the Agreement requires be sent to the Commissioner or to the Department (e.g., notices, filings, or submissions) shall be sent to:

New York City Department of Sanitation  
Attn: Agency Chief Contracting Officer  
44 Beaver Street, Room 203  
New York, New York 10004

**EXHIBIT B:**

**Payment Rates**

PIN: 82721CC0003



**New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies**

**EXHIBIT B**

**HOURLY PAYMENT RATES FOR EQUIPMENT  
(including costs for Operators)  
2020-2021, 2021-2022, and 2022-2023 Winter Seasons**

---

**DUMP TRUCKS, TRACTOR TRAILERS, & ROLL-ON/ROLL-OFF  
CONTAINERS**

CAPACITY IN CUBIC YARDS	FY21	FY22	FY23
14.0 – 18.0	\$163	\$166	\$170
18.1 – 22.0	\$183	\$186	\$190
22.1 – 30.9	\$200	\$204	\$208
31.0 and over	\$237	\$241	\$246

---

**FRONT END LOADERS, BACKHOES, & EXCAVATORS**

BUCKET CAPACITY IN CUBIC YARDS	FY21	FY22	FY23
.50 – .99	\$166	\$170	\$173
1.0 – 2.99	\$187	\$190	\$194
3.0 – 3.99	\$263	\$268	\$274
4.0 and over	\$320	\$327	\$333

New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies

**EXHIBIT B**

**HOURLY PAYMENT RATES FOR EQUIPMENT  
(including costs for Operators)  
2020-2021, 2021-2022, and 2022-2023 Winter Seasons**

---

**BULLDOZERS**

DRAW-BAR  
HORSEPOWER

	FY21	FY22	FY23
45 – 90	\$122	\$125	\$127
91 – 150	\$158	\$161	\$164
151 and over	\$186	\$189	\$193

---

**SKID-STEERS WITH BUCKET**

	FY21	FY22	FY23
	\$166	\$170	\$173

---

**SNOW MELTERS**

\$11 PER TON OF HOURLY MELTING CAPACITY

(e.g., \$660 for a melter with an hourly capacity of 60 tons;  
\$2,200 for a melter with an hourly capacity of 200 tons)

---

**BUSES**

\$ 80.00 PER HOUR (15 PASSENGER)

\$ 105.00 PER HOUR (40 PASSENGER)

New York City Department of Sanitation  
Agreement to Hire Equipment with Operators for Snow Removal Emergencies

**EXHIBIT B**

**HOURLY PAYMENT RATES FOR EQUIPMENT  
(including costs for Operators)  
2020-2021, 2021-2022, and 2022-2023 Winter Seasons**

---

**MISCELLANEOUS TOWING VEHICLES**

FY21	FY22	FY23
\$173	\$177	\$180

---

**PICK-UPS WITH PLOWS**

FY21	FY22	FY23
\$146	\$149	\$152

---

**EXHIBIT C:**

**List of Equipment Offered Forms**

PIN: 82721CC0003

# sanitation

DATE SUBMITTED: \_\_\_\_\_

LIST OF EQUIPMENT OFFERED DS 1621A (7.17)

## ROLL ON ROLL OFFS, TRACTOR TRAILERS, DUMP TRUCKS

CONTRACTOR'S NAME	ADDRESS
-------------------	---------

	MANUFACTURER	MODEL	LICENSE PLATE NUMBER	VIN NUMBER	TRK. CU. YDS. CAPACITY	TRK. HEIGHT FROM GROUND TO LIP OF BODY
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						

# sanitation

DATE SUBMITTED: \_\_\_\_\_

LIST OF EQUIPMENT OFFERED DS 1621B (7.17)

## FRONT END LOADERS, BACKHOES, EXCAVATORS

CONTRACTOR'S NAME	ADDRESS
-------------------	---------

	MANUFACTURER	MODEL	LICENSE PLATE NUMBER	VIN NUMBER	BUCKET CUBIC YARDS CAPACITY	TIRES	CRAWLERS
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							



# sanitation

DATE SUBMITTED: \_\_\_\_\_

LIST OF EQUIPMENT OFFERED DS 1621D (7.17)

**SKID-STEERS**

CONTRACTOR'S NAME	ADDRESS
-------------------	---------

	MANUFACTURER	MODEL	LICENSE PLATE NUMBER	VIN NUMBER	HORSE POWER 25 MINIMUM	TIRES	CRAWLERS
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							



# sanitation

DATE SUBMITTED: \_\_\_\_\_

LIST OF EQUIPMENT OFFERED DS 1621E (7.17)

## SNOW MELTERS

CONTRACTOR'S NAME	ADDRESS
-------------------	---------

	MANUFACTURER	MODEL	LIC. NUMBER	VIN NUMBER	CAPACITY PER HOUR	TIRES	CRAWLERS
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							

# sanitation

DATE SUBMITTED: \_\_\_\_\_

LIST OF EQUIPMENT OFFERED DS 1621F (7.17)

## TOWING VEHICLES

CONTRACTOR'S NAME	ADDRESS
-------------------	---------

	MANUFACTURER	MODEL	LICENSE PLATE NUMBER	VIN NUMBER	GROSS VEHICLE WEIGHT 400 LBS MINIMUM
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
23					

# sanitation

DATE SUBMITTED: \_\_\_\_\_

LIST OF EQUIPMENT OFFERED DS 1621G (7.17)

**PICK-UPS WITH PLOWS**

CONTRACTOR'S NAME	ADDRESS
-------------------	---------

	MANUFACTURER	MODEL	LICENSE PLATE NUMBER	VIN NUMBER	GROSS VEHICLE WEIGHT	PLOW WIDTH
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						

# sanitation

DATE SUBMITTED: \_\_\_\_\_

LIST OF EQUIPMENT OFFERED DS 1621H (7.17)

**BUSES**

CONTRACTOR'S NAME	ADDRESS
-------------------	---------

	MANUFACTURER	MODEL	LICENSE PLATE NUMBER	VIN NUMBER	GROSS VEHICLE WEIGHT	PLOW WIDTH
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						

**EXHIBIT D:**

**Hired Equipment Time Certificate Form**

PIN: 82721CC0003

**THE CITY OF NEW YORK Department of Sanitation**  
 HIRED EQUIPMENT TIME CERTIFICATE DS 1809 (SR 44-7) (7.17)

CERTIFICATE NO.

**CONTRACTOR'S INFORMATION**

DATE

CONTRACTOR'S NAME		CONTRACTOR'S INDEX NO.		OPERATOR'S NAME			CONTRACTOR'S 24/7 CONTACT PHONE NO.	
ADDRESS		CITY		STATE	ZIP	BUSINESS PHONE		BUSINESS E-MAIL

**EQUIPMENT INFORMATION**

**PLACARD INFORMATION**

LICENSE PLATE	TRAILER PLATE		STATE	BORO	DIST.	STORM	SEQUENCE
EQUIPMENT TYPE	MAKE	MODEL		ENGINE NO. / VIN NO.			
DISTRICT ASSIGNED	CAPACITY	DSNY MEASURER (PRINT)				TITLE	BADGE NO.

**HAULING RUNS (FOR DUMP TRUCKS ONLY)**

HAULING / PILING STARTING POINT		TIME ARRIVED AT HAULING LOCATION	DUMPING LOCATION (i.e. SNOW DUMP)		
PUNCH	TIME LOADED	DSNY REPRESENTATIVE NAME	TIME DUMPED	DSNY REPRESENTATIVE NAME	PUNCH
1					1
2					2
3					3
4					4
5					5
6					6
7					7
8					8
9					9
10					10
11					11
12					12

If more than 12 loads, use second SR 44-7. Cross out red certificate number on second SR 44-7 and write in certificate number of original SR 44-7, staple second SR 44-7 to original SR 44-7. Write 1 of 2 pages across original SR 44-7, and 2 of 2 pages across second SR 44-7 etc.

**WORK PERFORMANCE SECTION**

START OF SCHEDULED SHIFT	ACTUAL TIME STARTED	DATE STARTED	CERTIFIED BY DSNY REPRESENTATIVE (PRINT & SIGNATURE)
	ACTUAL TIME DISMISSED	DATE DISMISSED	

**NON-DEDUCTIBLE TIME**

**DEDUCTIBLE NON-WORKING TIME**

EQUIPMENT RELOCATED FROM:		EQUIPMENT RELOCATED TO:		REASON FOR DEDUCTIBLE TIME	FROM TIME	TO TIME	DEDUCTED TIME
TRANSFERRED BY DSNY REPRESENTATIVE (PRINT & SIGNATURE)			TIME OF DEPARTURE				
TRANSFER ACCEPTED BY DSNY REPRESENTATIVE (PRINT & SIGNATURE)			TIME OF ARRIVAL				
REMARKS				CERTIFICATE NO.		DEDUCTION CERTIFIED BY DSNY REPRESENTATIVE (PRINT & SIGNATURE)	
						TOTAL DEDUCTIBLE TIME	
						Hrs. Mins.	
				TOTAL HOURS CERTIFIED FOR PAYMENT		Hrs. Mins.	
CERTIFIED BY DSNY REPRESENTATIVE (PRINT & SIGNATURE)				ACKNOWLEDGEMENT OF RECEIPT BY CONTRACTOR'S REPRESENTATIVE (PRINT & SIGNATURE)			
				DATE			

WHITE — FISCAL SERVICES

YELLOW — DISTRICT

BUFF — VENDOR

**EXHIBIT E:**

**Equipment Capacity Certificate Forms**

PIN: 82721CC0003

# sanitation

## EQUIPMENT CAPACITY CERTIFICATE DS 1691A (TMU 20) (7.17)

DATE

CONTRACTOR'S NAME		OPERATOR'S NAME		DSNY INDEX NO.	
STREET ADDRESS			CITY	STATE	ZIP CODE

### VEHICLE INFORMATION

### PLACARD INFORMATION

COMMERCIAL LICENSE PLATE NO.	MAKE	YEAR	VIN / ENGINE NO.	BORO	DISTRICT	STORM	SEQUENCE
TRAILER LICENSE PLATE NO.	TRAILER MAKE	YEAR	TRAILER VIN NO.				

### INITIAL MEASUREMENT OF TRUCK/TRAILER/CONTAINER

SECTION	LENGTH	WIDTH	DEPTH	CUBIC YARDS
BOTTOM	X	X	=	A
TOP	X	X	=	B
A + B TOTALS CUBIC YARDS →				
*ADJUSTMENTS FOR DEDUCTIONS	X	X	=	C
A + B - C TOTALS CUBIC YARDS →				

FULL TAILGATE

PART TAILGATE

MEASURING LOCATION	DISTRICT	START TIME	FINISH TIME
MEASURER'S NAME (PRINT)	SIGNATURE	BADGE NO.	DISTRICT

REASON FOR REJECTION:

### DRAW DIAGRAM OF TRUCK / TRAILER BODY/CONTAINER

\*SHOW WORK REQUIRING ADJUSTMENTS



**EQUIPMENT CAPACITY CERTIFICATE** DS 1691B (TMU 20) (7.17)

**REMEASUREMENT OF TRUCK / TRAILER BODY/CONTAINER**

CONTRACTOR'S NAME	OPERATOR'S NAME	DSNY INDEX NO.
-------------------	-----------------	----------------

**VEHICLE INFORMATION**

**PLACARD INFORMATION**

COMMERCIAL LICENSE PLATE NO.	MAKE	YEAR	VIN / ENGINE NO.	BORO	DISTRICT	STORM	SEQUENCE
TRAILER LICENSE PLATE NO.	TRAILER MAKE	YEAR	TRAILER VIN NO.				

**REMEASUREMENT OF TRUCK/TRAILER/CONTAINER**

SECTION	LENGTH		WIDTH		DEPTH		CUBIC YARDS
BOTTOM		X		X		=	A
TOP		X		X		=	B
A + B TOTALS CUBIC YARDS						➔	
*ADJUSTMENTS FOR DEDUCTIONS		X		X		=	C
A + B - C TOTALS CUBIC YARDS						➔	

FULL TAILGATE

PART TAILGATE

MEASURING LOCATION	DISTRICT	START TIME	FINISH TIME
MEASURER'S NAME (PRINT)	SIGNATURE	BADGE NO.	DISTRICT

**REASON FOR REJECTION:**

---



---

**DRAW DIAGRAM OF TRUCK / TRAILER BODY/CONTAINER**

\*SHOW WORK REQUIRING ADJUSTMENTS

# sanitation

## EQUIPMENT CAPACITY CERTIFICATE

FOR FRONT END LOADER, BACKHOE OR EXCAVATOR BUCKET DS 1692A (TMU 20A) (7.17)

DATE

CONTRACTOR'S NAME		OPERATOR'S NAME		DSNY INDEX NO.	
STREET ADDRESS			CITY	STATE	ZIP CODE

### VEHICLE INFORMATION

### PLACARD INFORMATION

COMMERCIAL LICENSE PLATE NO.	MAKE	YEAR	VIN / ENGINE NO.	BORO	DISTRICT	STORM	SEQUENCE
------------------------------	------	------	------------------	------	----------	-------	----------

### METHOD OF MEASUREMENT

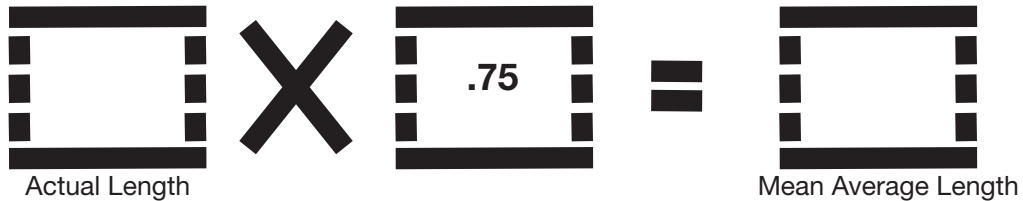
<b>LENGTH</b>	<b>WIDTH</b>	<b>DEPTH</b>
<p>Bucket Strike Line</p> <p>Measure from the top of cutting edge to the back of the Bucket Strike Line.</p>	<p>Face bucket, measure from inside left to right.</p>	<p>Strike Line Stick</p> <p>Put stick across the strike line and measure from under the stick to the deepest part of the bucket.</p>

### INITIAL MEASUREMENT OF CAPACITY

COMPUTING THE CUBIC YARDS OF A BUCKET IS DONE AS FOLLOWS:

STEP 1) Calculate the mean average length using the following formula:

$$\text{Actual Length} \times .75 = \text{Mean Average Length}$$



STEP 2) Calculate cubic yards of bucket capacity using the following formula:

$$\text{Mean Average Length} \times \text{Width} \times \text{Depth} = \text{Total Cubic Yards of Bucket Capacity}$$



MEASURING LOCATION		DISTRICT	START TIME	FINISH TIME
MEASURER'S NAME (PRINT)		SIGNATURE	BADGE NO.	DISTRICT

REASON FOR REJECTION:

---



---



---



---

# EQUIPMENT CAPACITY CERTIFICATE

REMEASUREMENT OF BUCKET ON FRONT END LOADER, BACKHOE OR EXCAVATOR DS 1692B (TMU 20A) (7.17)

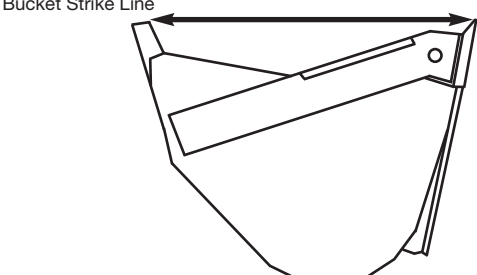
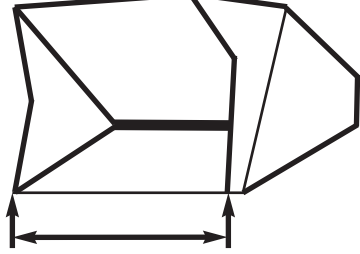
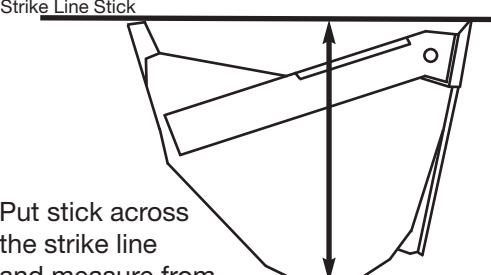
# REMEASUREMENT

## VEHICLE INFORMATION

## PLACARD INFORMATION

COMMERCIAL LICENSE PLATE NO.	MAKE	YEAR	VIN / ENGINE NO.	BORO	DISTRICT	STORM	SEQUENCE
------------------------------	------	------	------------------	------	----------	-------	----------

## METHOD OF MEASUREMENT

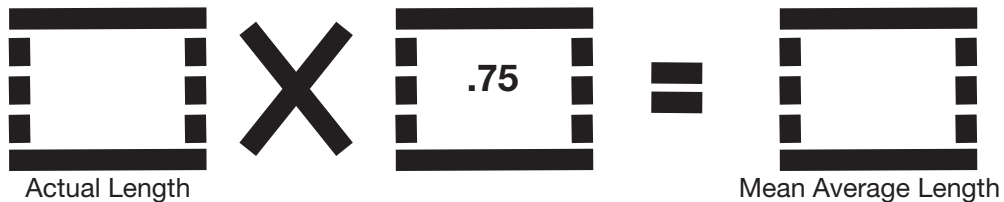
<b>LENGTH</b>	<b>WIDTH</b>	<b>DEPTH</b>
 <p>Bucket Strike Line</p> <p>Measure from the top of cutting edge to the back of the Bucket Strike Line.</p>	 <p>Face bucket, measure from inside left to right.</p>	 <p>Strike Line Stick</p> <p>Put stick across the strike line and measure from under the stick to the deepest part of the bucket.</p>

## REMEASUREMENT OF CAPACITY

COMPUTING THE CUBIC YARDS OF A BUCKET IS DONE AS FOLLOWS:

STEP 1) Calculate the mean average length using capacity the following formula:

$$\text{Actual Length} \times .75 = \text{Mean Average Length}$$



STEP 2) Calculate cubic yards of bucket capacity using the following formula:

$$\text{Mean Average Length} \times \text{Width} \times \text{Depth} = \text{Total Cubic Yards of Bucket Capacity}$$



MEASURING LOCATION		DISTRICT	START TIME	FINISH TIME
MEASURER'S NAME (PRINT)		SIGNATURE	BADGE NO.	DISTRICT

REASON FOR REJECTION UPON REMEASUREMENT:

---



---



---



---



---

**EXHIBIT F:**

**City Standard Service Contract Terms and Conditions**

PIN: 82721CC0003

**APPENDIX A**

**GENERAL PROVISIONS GOVERNING CONTRACTS FOR  
CONSULTANTS, PROFESSIONAL, TECHNICAL, HUMAN, AND CLIENT SERVICES**

**ARTICLE 1 - DEFINITIONS..... 1**

*Section 1.01 Definitions..... 1*

**ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES ..... 2**

*Section 2.01 Procurement of Agreement ..... 2*

*Section 2.02 Conflicts of Interest ..... 2*

*Section 2.03 Certification Relating to Fair Practices..... 3*

*Section 2.04 Disclosures Relating to Vendor Responsibility ..... 3*

*Section 2.05 Disclosure Relating to Bankruptcy and Reorganization ..... 3*

*Section 2.06 Authority to Execute Agreement ..... 4*

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING ..... 4**

*Section 3.01 Assignment..... 4*

*Section 3.02 Subcontracting ..... 5*

**ARTICLE 4 - LABOR PROVISIONS..... 7**

*Section 4.01 Independent Contractor Status..... 7*

*Section 4.02 Employees and Subcontractors..... 8*

*Section 4.03 Removal of Individuals Performing Work ..... 8*

*Section 4.04 Minimum Wage; Living Wage ..... 9*

*Section 4.05 Non-Discrimination in Employment ..... 11*

*Section 4.06 Paid Sick Leave Law..... 14*

*Section 4.07 Whistleblower Protection Expansion Act..... 18*

**ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS..... 20**

*Section 5.01 Books and Records ..... 20*

*Section 5.02 Retention of Records ..... 20*

*Section 5.03 Inspection..... 20*

*Section 5.04 Audit ..... 21*

*Section 5.05 No Removal of Records from Premises ..... 21*

*Section 5.06 Electronic Records ..... 22*

*Section 5.07 Investigations Clause..... 22*

## Appendix A January 2018 Final

---

<i>Section 5.08 Confidentiality</i> .....	24
<b>ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST</b> .....	<b>26</b>
<i>Section 6.01 Copyrights and Ownership of Work Product</i> .....	26
<i>Section 6.02 Patents and Inventions</i> .....	27
<i>Section 6.03 Pre-existing Rights</i> .....	27
<i>Section 6.04 Antitrust</i> .....	27
<b>Article 7 - INSURANCE</b> .....	<b>28</b>
<i>Section 7.01 Agreement to Insure</i> .....	28
<i>Section 7.02 Workers' Compensation, Disability Benefits, and Employers' Liability Insurance</i> .....	28
<i>Section 7.03 Other Insurance</i> .....	29
<i>Section 7.04 General Requirements for Insurance Coverage and Policies</i> .....	30
<i>Section 7.05 Proof of Insurance</i> .....	31
<i>Section 7.06 Miscellaneous</i> .....	32
<b>Article 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION</b> .....	<b>33</b>
<i>Section 8.01 Reasonable Precautions</i> .....	33
<i>Section 8.02 Protection of City Property</i> .....	33
<i>Section 8.03 Indemnification</i> .....	33
<i>Section 8.04 Infringement Indemnification</i> .....	33
<i>Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation</i> .....	34
<i>Section 8.06 Actions By or Against Third Parties</i> .....	34
<i>Section 8.07 Withholding of Payments</i> .....	34
<i>Section 8.08 No Third Party Rights</i> .....	35
<b>ARTICLE 9 - CONTRACT CHANGES</b> .....	<b>35</b>
<i>Section 9.01 Contract Changes</i> .....	35
<i>Section 9.02 Changes Through Fault of Contractor</i> .....	35
<b>ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES</b> .....	<b>35</b>
<i>Section 10.01 Termination by the City Without Cause</i> .....	35
<i>Section 10.02 Reductions in Federal, State, and/or City Funding</i> .....	36
<i>Section 10.03 Contractor Default</i> .....	37
<i>Section 10.04 Force Majeure</i> .....	39
<i>Section 10.05 Procedures for Termination</i> .....	39

**Appendix A January 2018 Final**

---

*Section 10.06 Miscellaneous Provisions* ..... 40

*Section 10.07 Liquidated Damages*..... 41

**Article 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**..... 41

*Section 11.01 Prompt Payment* ..... 41

*Section 11.02 Electronic Funds Transfer*..... 41

**Article 12 - CLAIMS** ..... 42

*Section 12.01 Choice of Law* ..... 42

*Section 12.02 Jurisdiction and Venue*..... 42

*Section 12.03 Resolution of Disputes* ..... 42

*Section 12.04 Claims and Actions* ..... 47

*Section 12.05 No Claim Against Officials, Agents, or Employees*..... 47

*Section 12.06 General Release*..... 48

*Section 12.07 No Waiver* ..... 48

**ARTICLE 13 - APPLICABLE LAWS** ..... 48

*Section 13.01 PPB Rules*..... 48

*Section 13.02 All Legal Provisions Deemed Included*..... 48

*Section 13.03 Severability / Unlawful Provisions Deemed Stricken*..... 48

*Section 13.04 Compliance With Laws* ..... 48

*Section 13.05 Unlawful Discrimination in the Provision of Services* ..... 49

*Section 13.05 Americans with Disabilities Act (ADA)* ..... 49

*Section 13.06 Voter Registration* ..... 50

*Section 13.07 Political Activity*..... 53

*Section 13.08 Religious Activity*..... 53

*Section 13.09 Participation in an International Boycott*..... 53

*Section 13.10 MacBride Principles* ..... 53

*Section 13.11 Access to Public Health Insurance Coverage Information*..... 54

*Section 13.12 Distribution of Personal Identification Materials* ..... 55

**Article 14 - MISCELLANEOUS PROVISIONS** ..... 56

*Section 14.01 Conditions Precedent*..... 56

*Section 14.02 Merger* ..... 56

*Section 14.03 Headings* ..... 56

*Section 14.04 Notice*..... 56

## ARTICLE 1 - DEFINITIONS

### Section 1.01 Definitions

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

A. “Agency Chief Contracting Officer” or “ACCO” means the position delegated authority by the Agency Head to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the City Chief Procurement Officer.

B. “Agreement” means the various documents, including this Appendix A, that constitute the contract between the Contractor and the City.

C. “City” means the City of New York.

D. “City Chief Procurement Officer” or “CCPO” means the position delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCOs.

E. “Commissioner” or “Agency Head” means the head of the Department or his or her duly authorized representative. The term “duly authorized representative” shall include any person or persons acting within the limits of his or her authority.

F. “Comptroller” means the Comptroller of the City of New York.

G. “Contractor” means the entity entering into this Agreement with the City.

H. “Days” means calendar days unless otherwise specifically noted to mean business days.

I. “Department” or “Agency” means the City agency or office through which the City has entered into this Agreement.

J. “Law” or “Laws” means the New York City Charter (“Charter”), the New York City Administrative Code (“Admin. Code”), a local rule of the City of New York, the Constitutions of the United States and the State of New York, a statute of the United States or of the State of New York and any ordinance, rule or regulation having the force of law and adopted pursuant thereto, as amended, and common law.

K. “Procurement Policy Board” or “PPB” means the board established pursuant to Charter § 311 whose function is to establish comprehensive and consistent procurement policies and rules that have broad application throughout the City.



L. “PPB Rules” means the rules of the Procurement Policy Board as set forth in Title 9 of the Rules of the City of New York (“RCNY”), § 1-01 *et seq.*

M. “SBS” means the New York City Department of Small Business Services.

N. “State” means the State of New York.

## **ARTICLE 2 – REPRESENTATIONS, WARRANTIES, CERTIFICATIONS, AND DISCLOSURES**

### **Section 2.01 Procurement of Agreement**

A. The Contractor represents and warrants that, with respect to securing or soliciting this Agreement, the Contractor is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). The Contractor makes such representation and warranty to induce the City to enter into this Agreement and the City relies upon such representation and warranty in the execution of this Agreement.

B. For any breach or violation of the representation and warranty set forth in Paragraph A above, the Commissioner shall have the right to annul this Agreement without liability, entitling the City to recover all monies paid to the Contractor; and the Contractor shall not make claim for, or be entitled to recover, any sum or sums due under this Agreement. The rights and remedies of the City provided in this Section 2.01(B) are not exclusive and are in addition to all other rights and remedies allowed by Law or under this Agreement.

### **Section 2.02 Conflicts of Interest**

A. 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 conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Section 2.02(B) shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

C. The Contractor shall not employ a person or permit a person to serve as a member of the Board of Directors or as an officer of the Contractor if such employment or service would violate Chapter 68 of the Charter.

**Section 2.03 Certification Relating to Fair Practices**

A. The Contractor and each person signing on its behalf certifies, under penalties of perjury, that to the best of its, his or her knowledge and belief:

1. The prices and other material terms set forth in this Agreement have been arrived at independently, without collusion, consultation, communication, or agreement with any other bidder or proposer or with any competitor as to any matter relating to such prices or terms for the purpose of restricting competition;

2. Unless otherwise required by Law or where a schedule of rates or prices is uniformly established by a government agency through regulation, policy, or directive, the prices and other material terms set forth in this Agreement that have been quoted in this Agreement and on the bid or proposal submitted by the Contractor have not been knowingly disclosed by the Contractor, directly or indirectly, to any other bidder or proposer or to any competitor prior to the bid or proposal opening; and

3. No attempt has been made or will be made by the Contractor to induce any other person or entity to submit or not to submit a bid or proposal for the purpose of restricting competition.

B. The fact that the Contractor (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has sold the same items to other customers at the same prices and/or terms being bid or proposed, does not constitute, without more, a disclosure within the meaning of this Section 2.03.

**Section 2.04 Disclosures Relating to Vendor Responsibility**

The Contractor represents and warrants that it has duly executed and filed all disclosures as applicable, in accordance with Admin. Code § 6-116.2, PPB Rule § 2-08, and the policies and procedures of the Mayor's Office of Contract Services. The Contractor acknowledges that the Department's reliance on the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and the Contractor represents and warrants that the information it and its principals have provided is accurate and complete.

**Section 2.05 Disclosure Relating to Bankruptcy and Reorganization**

If the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven days of filing.

**Section 2.06 Authority to Execute Agreement**

The Contractor represents and warrants that: (i) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (iii) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms.

**ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING**

**Section 3.01 Assignment**

A. The Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or the right to execute it, or the right, title, or interest in or to it or any part of it, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Agreement, without the prior written consent of the Commissioner. The giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments. Any such assignment, transfer, conveyance, or other disposition without such written consent shall be void.

B. Before entering into any such assignment, transfer, conveyance, or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's disclosure that is required by PPB Rule § 2-08(e) must be submitted within 30 Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience, and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Department shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

C. Failure to obtain the prior written consent to such an assignment, transfer, conveyance, or other disposition may result in the revocation and annulment of this Agreement, at the option of the Commissioner. The City shall thereupon be relieved and discharged from any further liability and obligation to the Contractor, its assignees, or transferees, who shall forfeit all monies earned under this Agreement, except so much as may be necessary to pay the Contractor's employees.

D. The provisions of this Section 3.01 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.

E. This Agreement may be assigned, in whole or in part, by the City to any corporation, agency, or instrumentality having authority to accept such assignment. The City shall provide the Contractor with written notice of any such assignment.

**Section 3.02 Subcontracting**

A. In accordance with PPB Rule § 4-13, all subcontractors must be approved by the Department prior to commencing work under a subcontract.

1. *Approval when subcontract is \$20,000 or less.* The Department hereby grants approval for all subcontractors providing services covered by this Agreement pursuant to a subcontract in an amount that does not exceed \$20,000.00. The Contractor must submit monthly reports to the Department listing all such subcontractors and shall list the subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)).

2. *Approval when subcontract is greater than \$20,000.*

a. The Contractor shall not enter into any subcontract for an amount greater than \$20,000.00 without the prior approval by the Department of the subcontractor.

b. Prior to entering into any subcontract for an amount greater than \$20,000.00, the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor, the portion of the work and materials that it is to perform and furnish, and the estimated cost of the subcontract. If the subcontractor is providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available, the Contractor shall submit proof of professional liability insurance in the amount required by Article 7. In addition, the Contractor shall list the proposed subcontractor in the City's Payee Information Portal ([www.nyc.gov/pip](http://www.nyc.gov/pip)) and provide the following information: maximum subcontract value, description of subcontractor work, start and end date of the subcontract, and the subcontractor's industry.<sup>1</sup>

c. Upon receipt the information required above, the Department in its discretion may grant or deny preliminary approval for the Contractor to contract with the subcontractor.

---

<sup>1</sup> Assistance establishing a Payee Information Portal account and using the system may be obtained by emailing the Financial Information Services Agency Help Desk at [pip@fisa.nyc.gov](mailto:pip@fisa.nyc.gov).

d. The Department shall notify the Contractor within 30 Days whether preliminary approval has been granted. If preliminary approval is granted, the Contractor shall provide such documentation as may be requested by the Department to show that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the required work, including, the proposed subcontract and/or any of the items listed in PPB Rule 4-13(d)(3).

e. Upon receipt of all relevant documentation, the Department shall notify the Contractor in writing whether the proposed subcontractor is approved. If the proposed subcontractor is not approved, the Contractor may submit another proposed subcontractor unless the Contractor decides to do the work. No subcontractor shall be permitted to perform work unless approved by the Department.

f. For proposed subcontracts that do not exceed \$25,000.00, the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within 45 Days of the Department's receipt of the written request for approval or, if PPB Rule 2-08(e) is applicable, within 45 Days of the Department's acknowledged receipt of fully completed disclosures for the subcontractor.

B. All subcontracts must be in writing. All subcontracts shall contain provisions specifying that:

1. The work performed by the subcontractor must be in accordance with the terms of the Agreement between the City and the Contractor;

2. Nothing contained in the agreement between the Contractor and the subcontractor shall impair the rights of the City;

3. Nothing contained in the agreement between the Contractor and the subcontractor, or under the Agreement between the City and the Contractor, shall create any contractual relation between the subcontractor and the City; and

4. The subcontractor specifically agrees to be bound by Section 4.05(D) and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

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

D. For determining the value of a subcontract, all subcontracts with the same subcontractor shall be aggregated.

E. The Department may revoke the approval of a subcontractor granted or deemed granted pursuant to Section 3.02(A) if revocation is deemed to be in the interest of the City in writing on no less than 10 Days' notice unless a shorter period is warranted by considerations of health, safety, integrity issues, or other similar factors. Upon the effective date of such revocation, the Contractor shall cause the subcontractor to cease all work under the Agreement. The City shall not incur any further obligation for services performed by such subcontractor pursuant to this Agreement beyond the effective date of the revocation. The City shall pay for services provided by the subcontractor in accordance with this Agreement prior to the effective date of revocation.

F. The Department's approval of a subcontractor shall not relieve the Contractor of any of its responsibilities, duties, and liabilities under this Agreement. At the request of the Department, the Contractor shall provide the Department a copy of any subcontract.

G. Individual employer-employee contracts are not subcontracts subject to the requirements of this Section 3.02.

H. The Contractor shall report in the City's Payee Information Portal payments made to each subcontractor within 30 days of making the payment. If any of the information provided in accordance with Section 3.02(A)(2)(b) changes during the term of this Agreement, the Contractor shall update the information in such Portal accordingly. Failure of the Contractor to list a subcontractor and/or to report subcontractor payments in a timely fashion may result in the Department declaring the Contractor in default of the Agreement and will subject Contractor to liquidated damages in the amount of \$100 per day for each day that the Contractor fails to identify a subcontractor along with the required information about the subcontractor and/or fails to report payments to a subcontractor, beyond the time frames set forth herein or in the notice from the City.

## **ARTICLE 4 - LABOR PROVISIONS**

### **Section 4.01 Independent Contractor Status**

The Contractor and the City agree that the Contractor is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, the Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, assert the existence of any relationship or status on the part of the Contractor, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

**Section 4.02 Employees and Subcontractors**

All persons who are employed by the Contractor and all the Contractor's subcontractors (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while the Contractor is engaged under this Agreement. Nothing in this Agreement, and no entity or person's performance pursuant to or in connection with this Agreement, shall create any relationship between the City and the Contractor's employees, agents, subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of the Contractor, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement); or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). The Contractor and its employees, officers, and agents shall not, by reason of this Agreement or any performance pursuant to or in connection with this Agreement, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of the Contractor, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of the Contractor or any other entity. Except as specifically stated in this Agreement, nothing in the Agreement and no performance pursuant to or in connection with the Agreement shall impose any liability or duty on the City to any person or entity whatsoever.

**Section 4.03 Removal of Individuals Performing Work**

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful, and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five Days' written notice. The Commissioner may direct the Contractor to prohibit the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

**Section 4.04 Minimum Wage; Living Wage**

A. Except for those employees whose minimum wage is required to be fixed in accordance with N.Y. Labor Law §§ 220 or 230 or by Admin. Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section 4.04 shall be deemed a material breach of this Agreement.

B. If this Agreement involves the provision of homecare services, day care services, head start services, services to persons with cerebral palsy, building services, food services, or temporary services, as those services are defined in Admin. Code § 6-109 (“Section 6-109”), in accordance with Section 6-109, the Contractor agrees as follows:

1. The Contractor shall comply with the requirements of Section 6-109, including, where applicable, the payment of either a prevailing wage or a living wage, as those terms are defined in Section 6-109.

2. The Contractor shall not retaliate, discharge, demote, suspend, take adverse employment action in the terms and conditions of employment or otherwise discriminate against any employee for reporting or asserting a violation of Section 6-109, for seeking or communicating information regarding rights conferred by Section 6-109, for exercising any other rights protected under Section 6-109, or for participating in any investigatory or court proceeding relating to Section 6-109. This protection shall also apply to any employee or his or her representative who in good faith alleges a violation of Section 6-109, or who seeks or communicates information regarding rights conferred by Section 6-109 in circumstances where he or she in good faith believes it applies.

3. The Contractor shall maintain original payroll records for each of its covered employees reflecting the days and hours worked on contracts, projects, or assignments that are subject to the requirements of Section 6-109, and the wages paid and benefits provided for such hours worked. The Contractor shall maintain these records for the duration of the term of this Agreement and shall retain them for a period of four years after completion of this Agreement. For contracts involving building services, food services, or temporary services, the Contractor shall submit copies of payroll records, certified by the Contractor under penalty of perjury to be true and accurate, to the Department with every requisition for payment. For contracts involving homecare, day care, head start or services to persons with cerebral palsy, the Contractor shall submit either certified payroll records or categorical information about the wages, benefits, and job classifications of covered employees of the Contractor, and of any subcontractors, which shall be the substantial equivalent of the information required in Section 6-109(2)(a)(iii).



4. The Contractor and all subcontractors shall pay all covered employees by check and shall provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements, and health benefits. In addition, if this Agreement is for an amount greater than \$1,000,000.00, checks issued by the Contractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department). For any subcontract for an amount greater than \$750,000.00, checks issued by a subcontractor to covered employees shall be generated by a payroll service or automated payroll system (an in-house system may be used if approved by the Department).

5. The Department will provide written notices to the Contractor, prepared by the Comptroller, detailing the wages, benefits, and other protections to which covered employees are entitled under Section 6-109. Such notices will be provided in English, Spanish and other languages spoken by ten percent or more of a covered employer's covered employees. Throughout the term of this Agreement, the Contractor shall post in a prominent and accessible place at every work site and provide each covered employee a copy of the written notices provided by the Department. The Contractor shall provide the notices to its subcontractors and require them to be posted and provided to each covered employee.

6. The Contractor shall ensure that its subcontractors comply with the requirements of Section 6-109, and shall provide written notification to its subcontractors of those requirements. All subcontracts made by the Contractor shall be in writing and shall include provisions relating to the wages, supplements, and health benefits required by Section 6-109. No work may be performed by a subcontractor employing covered employees prior to the Contractor entering into a written subcontract with the subcontractor.

7. Each year throughout the term of the Agreement and whenever requesting the Department's approval of a subcontractor, the Contractor shall submit to the Department an updated certification, as required by Section 6-109 and in the form of the certification attached to this Agreement, identifying any changes to the current certification.

8. Failure to comply with the requirements of Section 6-109 may, in the discretion of the Department, constitute a material breach by the Contractor of the terms of this Agreement. If the Contractor and/or subcontractor receives written notice of such a breach and fails to cure such breach within 30 Days, the City shall have the right to pursue any rights or remedies available under this Agreement or under applicable law, including termination of the Agreement. If the Contractor fails to perform in accordance with any of the requirements of Section 6-109 and fails to cure such failure in accordance with the preceding sentence, and there is a continued need for the service, the City may obtain from another source the required service as specified in the original Agreement, or

any part thereof, and may charge the Contractor for any difference in price resulting from the alternative arrangements, and may, as appropriate, invoke such other sanctions as are available under the Agreement and applicable law. In addition, the Contractor agrees to pay for all costs incurred by the City in enforcing the requirements of Section 6-109, including the cost of any investigation conducted by or on behalf of the Department or the Comptroller, where the City discovers that the Contractor or its subcontractor(s) failed to comply with the requirements of this Section 4.04(B) or of Section 6-109. The Contractor also agrees, that should it fail or refuse to pay for any such investigation, the Department is hereby authorized to deduct from a Contractor's account an amount equal to the cost of such investigation.

**Section 4.05 Non-Discrimination in Employment**

A. General Prohibition. To the extent required by law, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

B. N.Y. Labor Law § 220-e. If this Agreement is for the construction, alteration or repair of any public building or public work or for the manufacture, sale, or distribution of materials, equipment, or supplies, the Contractor agrees, as required by N.Y. Labor Law § 220-e, that:

1. In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, neither the Contractor, subcontractor, nor any person acting on behalf of such Contractor or subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;

2. Neither the Contractor, subcontractor, nor any person on his or her behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, color, disability, sex or national origin;

## Appendix A January 2018 Final

---

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of \$50.00 for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

4. This Agreement may be terminated by the City, and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 4.05.

The provisions of this Section 4.05(B) shall be limited to operations performed within the territorial limits of the State of New York.

C. Admin. Code § 6-108. If this Agreement is for the construction, alteration or repair of buildings or the construction or repair of streets or highways, or for the manufacture, sale, or distribution of materials, equipment or supplies, the Contractor agrees, as required by Admin. Code § 6-108, that:

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

2. It shall be unlawful for any person or any servant, agent or employee of any person, described in Section 4.05(C)(1) above, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section 4.05(C) shall, upon conviction thereof, be punished by a fine of not more than \$100.00 or by imprisonment for not more than 30 Days, or both.

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

1. This Agreement is subject to the requirements of City Executive Order No. 50 (1980) ("E.O. 50"), as revised, and the rules set forth at 66 RCNY §§ 10-01 *et seq.* No agreement will be awarded unless and until these requirements have been complied with in their entirety. The Contractor agrees that it:

a. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability,

marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;

b. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;

c. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;

d. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;

e. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the SBS, Division of Labor Services ("DLS"); and

f. Will permit DLS to have access to all relevant books, records, and accounts for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

2. The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Agreement and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the Commissioner to impose any or all of the following sanctions:

- a. Disapproval of the Contractor; and/or
- b. Suspension or termination of the Agreement; and/or
- c. Declaring the Contractor in default; and/or

d. In lieu of any of the foregoing sanctions, imposition of an employment program.

3. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in the Department declaring the Contractor to be non-responsible.

4. The Contractor agrees to include the provisions of the foregoing Sections 4.05(D)(1)-(3) in every subcontract or purchase order in excess of \$100,000.00 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Section 4.05(D)(4).

5. The Contractor further agrees that it will refrain from entering into any subcontract or modification thereof subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor for purposes of this Section 4.05(D)(5).

6. Nothing contained in this Section 4.05(D) shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised or controlled by or in connection with a religious organization, from lawfully limiting employment or lawfully giving preference to persons of the same religion or denomination or from lawfully making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

#### **Section 4.06 Paid Sick Leave Law**

##### *A. Introduction and General Provisions.*

1. The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>2</sup> Contractors of the City or of other governmental entities may be required to provide sick time pursuant to the PSLL.

---

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

2. The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the Admin. Code. It is administered by the City's Department of Consumer Affairs ("DCA"). DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

3. The Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this Agreement. The Contractor further acknowledges that such compliance is a material term of this Agreement and that failure to comply with the PSLL in performance of this Agreement may result in its termination.

4. The Contractor must notify the ACCO in writing within 10 Days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this Agreement. Additionally, the Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

5. The PSLL is summarized below for the convenience of the Contractor. The Contractor is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the PSLL. The Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

*B. Pursuant to the PSLL and the Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its "calendar year" pursuant to the PSLL ("Year") must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than 40 hours of sick time to an employee in any Year.

2. An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per Day. In addition, an employee may carry over up to 40 hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than 40 hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first Day of such Year.

3. An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency; or

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

4. An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

5. If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

6. Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the PSLL does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement in effect on April 1, 2014, until the termination of such agreement;
3. an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSSL are expressly waived in such collective bargaining agreement;
4. an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSSL for such employee;
5. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
6. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
7. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
8. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSSL.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.



F. *Records.* An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 Days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

2. DCA has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule, or regulation.

#### **Section 4.07 Whistleblower Protection Expansion Act**

A. In accordance with Local Laws 30 and 33 of 2012, codified at Admin. Code §§ 6-132 and 12-113, respectively,

1. Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Agreement to (i) the Commissioner of the Department of Investigation, (ii) a member of

the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.

2. If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of this Section 4.07, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.

3. Contractor shall post a notice provided by the City (attached hereto) in a prominent and accessible place on any site where work pursuant to the Agreement is performed that contains information about:

a. how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Agreement; and

b. the rights and remedies afforded to its employees under Admin. Code §§ 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Agreement.

4. For the purposes of this Section 4.07, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

5. This Section 4.07 is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000.00; accordingly, Contractor shall include this Section 4.07 in all subcontracts with a value in excess of \$100,000.00.

B. Section 4.07 is not applicable to this Agreement if it is valued at \$100,000.00 or less. Sections 4.07(A)(1), (2), (4), and (5) are not applicable to this Agreement if it was solicited pursuant to a finding of an emergency. Section 4.07(A)(3) is neither applicable to this Agreement if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

**ARTICLE 5 - RECORDS, AUDITS, REPORTS, AND INVESTIGATIONS**

**Section 5.01 Books and Records**

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

**Section 5.02 Retention of Records**

The Contractor agrees to retain all books, records, documents, other evidence relevant to this Agreement, including those required pursuant to Section 5.01, for six years after the final payment or expiration or termination of this Agreement, or for a period otherwise prescribed by Law, whichever is later. In addition, if any litigation, claim, or audit concerning this Agreement has commenced before the expiration of the six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim, or audit. Any books, records, documents, and other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as a paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice Law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, the Contractor agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

**Section 5.03 Inspection**

A. At any time during the Agreement or during the record retention period set forth in Section 5.02, the City, including the Department and the Department’s Office of the Inspector General, as well as City, State, and federal auditors and any other persons duly authorized by the City shall, upon reasonable notice, have full access to and the right to examine and copy all books, records, documents, and other evidence maintained or retained by or on behalf of the Contractor pursuant to this Article 5. Notwithstanding any provision herein regarding notice of inspection, all books, records, documents, and other evidence of the Contractor kept pursuant to this Agreement shall be subject to immediate inspection, review, and copying by the Department’s Office of the Inspector General, the Comptroller, and/or federal auditors without prior notice and at no additional cost to the City. The Contractor shall make such books, records documents, and other evidence available for inspection in the City of New York or shall reimburse the City for expenses associated with the out-of-City inspection.

B. The Department shall have the right to have representatives of the Department or of the City, State or federal government present to observe the services being performed. If

observation of particular services or activity would constitute a waiver of a legal privilege or violate the Law or an ethical obligation under the New York Rules of Professional Conduct for attorneys, National Association of Social Workers Code of Ethics or other similar code governing the provision of a profession's services in New York State, the Contractor shall promptly inform the Department or other entity seeking to observe such work or activity. Such restriction shall not act to prevent government representatives from inspecting the provision of services in a manner that allows the representatives to ensure that services are being performed in accordance with this Agreement.

C. The Contractor shall not be entitled to final payment until the Contractor has complied with any request for inspection or access given under this Section 5.03.

**Section 5.04 Audit**

A. This Agreement and all books, records, documents, and other evidence required to be maintained or retained pursuant to this Agreement, including all vouchers or invoices presented for payment and the books, records, and other documents upon which such vouchers or invoices are based (e.g., reports, cancelled checks, accounts, and all other similar material), are subject to audit by (i) the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, (ii) the State, (iii) the federal government, and (iv) other persons duly authorized by the City. Such audits may include examination and review of the source and application of all funds whether from the City, the State, the federal government, private sources, or otherwise.

B. Audits by the City, including the Comptroller, the Department, and the Department's Office of the Inspector General, are performed pursuant to the powers and responsibilities conferred by the Charter and the Admin. Code, as well as all orders, rules, and regulations promulgated pursuant to the Charter and Admin. Code.

C. The Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the Department and by the Comptroller in the exercise of his/her powers under Law.

D. The Contractor shall not be entitled to final payment until the Contractor has complied with the requirements of this Section 5.04.

**Section 5.05 No Removal of Records from Premises**

Where performance of this Agreement involves use by the Contractor of any City books, records, documents, or data (in hard copy, or electronic or other format now known or developed in the future) at City facilities or offices, the Contractor shall not remove any such items or material (in the format in which it originally existed, or in any other converted or derived format) from such facility or office without the prior written approval of the Department's designated official. Upon the request by the Department at any time during the Agreement or after the

Agreement has expired or terminated, the Contractor shall return to the Department any City books, records, documents, or data that has been removed from City premises.

**Section 5.06 Electronic Records**

As used in this Appendix A, the terms “books,” “records,” “documents,” and “other evidence” refer to electronic versions as well as hard copy versions.

**Section 5.07 Investigations Clause**

A. The Contractor agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City 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.

B.

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

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

C.

6. 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.

7. 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 E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:

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

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

E. 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 (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

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

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

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

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D 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 Paragraph (C)(1) 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.

**F. Definitions**

1. The term “license” or “permit” as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.

2. The term “person” as used in this Section 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.

3. The term “entity” as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.

4. The term “member” as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. 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 the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

**Section 5.08 Confidentiality**

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The obligation under this Section 5.08 to hold reports, information or data confidential shall not apply where the Contractor is legally required to disclose such reports, information or data, by virtue of a subpoena, court order or otherwise (“disclosure

demand”), provided that the Contractor complies with the following: (1) the Contractor shall provide advance notice to the Commissioner, in writing or by e-mail, that it received a disclosure demand for to disclose such reports, information or data and (2) if requested by the Department, the Contractor shall not disclose such reports, information, or data until the City has exhausted its legal rights, if any, to prevent disclosure of all or a portion of such reports, information or data. The previous sentence shall not apply if the Contractor is prohibited by law from disclosing to the Department the disclosure demand for such reports, information or data.

B. The Contractor shall provide notice to the Department within three days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City’s discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

C. The Contractor shall restrict access to confidential information to persons who have a legitimate work related purpose to access such information. The Contractor agrees that it will instruct its officers, employees, and agents to maintain the confidentiality of any and all information required to be kept confidential by this Agreement.

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least 24 hours prior to any statement to the press or at least five business days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.



E. At the request of the Department, the Contractor shall return to the Department any and all confidential information in the possession of the Contractor or its subcontractors. If the Contractor or its subcontractors are legally required to retain any confidential information, the Contractor shall notify the Department in writing and set forth the confidential information that it intends to retain and the reasons why it is legally required to retain such information. The Contractor shall confer with the Department, in good faith, regarding any issues that arise from the Contractor retaining such confidential information. If the Department does not request such information or the Law does not require otherwise, such information shall be maintained in accordance with the requirements set forth in Section 5.02.

F. A breach of this Section 5.08 shall constitute a material breach of this Agreement for which the Department may terminate this Agreement pursuant to Article 10. The Department reserves any and all other rights and remedies in the event of unauthorized disclosure.

## **ARTICLE 6 - COPYRIGHTS, PATENTS, INVENTIONS, AND ANTITRUST**

### **Section 6.01 Copyrights and Ownership of Work Product**

A. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to this Agreement, and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to this Agreement, shall upon their creation become the exclusive property of the City.

B. Any reports, documents, data, photographs, deliverables, and/or other materials provided pursuant to this Agreement (“Copyrightable Materials”) shall be considered “work-made-for-hire” within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements, and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as “work-made-for-hire,” the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Agreement without the prior written permission of the City. The Department may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the Department and set forth in the license.

C. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.

D. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright Law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Agreement, copies of which shall be provided to the City upon execution of this Agreement.

E. If the services under this Agreement are supported by a federal grant of funds, the federal and State government reserves a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for federal or State government purposes, the copyright in any Copyrightable Materials developed under this Agreement.

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

### **Section 6.02 Patents and Inventions**

The Contractor shall promptly and fully report to the Department any discovery or invention arising out of or developed in the course of performance of this Agreement. If the services under this Agreement are supported by a federal grant of funds, the Contractor shall promptly and fully report to the federal government for the federal government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

### **Section 6.03 Pre-existing Rights**

In no case shall Sections 6.01 and 6.02 apply to, or prevent the Contractor from asserting or protecting its rights in any discovery, invention, report, document, data, photograph, deliverable, or other material in connection with or produced pursuant to this Agreement that existed prior to or was developed or discovered independently from the activities directly related to this Agreement.

### **Section 6.04 Antitrust**

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 antitrust laws of the State or of the United States relating to the particular goods or services procured by the City under this Agreement.

## ARTICLE 7 - INSURANCE

### Section 7.01 Agreement to Insure

The Contractor shall maintain the following types of insurance if and as indicated in Schedule A (with the minimum limits and special conditions specified in Schedule A) throughout the term of this Agreement, including any applicable guaranty period. All insurance shall meet the requirements set forth in this Article 7. Wherever this Article 7 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Contractor can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

### Section 7.02 Workers’ Compensation, Disability Benefits, and Employers’ Liability Insurance

A. The Contractor shall maintain workers’ compensation insurance, employers’ liability insurance, and disability benefits insurance, in accordance with Law on behalf of, or in regard to, all employees providing services under this Agreement

B. Within 10 Days of award of this Agreement or as otherwise specified by the Department, and as required by N.Y. Workers’ Compensation Law §§ 57 and 220(8), the Contractor shall submit proof of Contractor’s workers’ compensation insurance and disability benefits insurance (or proof of a legal exemption) to the Department in a form acceptable to the New York State Workers’ Compensation Board. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

1. Form C-105.2, *Certificate of Workers’ Compensation Insurance*;
2. Form U-26.3, *State Insurance Fund Certificate of Workers’ Compensation Insurance*;
3. Form SI-12, *Certificate of Workers’ Compensation Self-Insurance*;
4. Form GSI-105.2, *Certificate of Participation in Worker’s Compensation Group Self-Insurance*;
5. Form DB-120.1, *Certificate of Disability Benefits Insurance*;
6. Form DB-155, *Certificate of Disability Benefits Self-Insurance*;
7. Form CE-200 – *Affidavit of Exemption*;
8. Other forms approved by the New York State Workers’ Compensation Board; or

9. Other proof of insurance in a form acceptable to the City.

### **Section 7.03 Other Insurance**

A. *Commercial General Liability Insurance.* The Contractor shall maintain commercial general liability insurance in the amounts specified in Schedule A covering operations under this Agreement. Coverage must be at least as broad as the coverage provided by the most recently issued ISO Form CG 00 01, primary and non-contributory, and “occurrence” based rather than “claims-made.” Such coverage shall list the City, together with its officials and employees, and any other entity that may be listed on Schedule A as an additional insured with coverage at least as broad as the most recently issued ISO Form CG 20 10 or CG 20 26 and, if construction is performed as part of the services, ISO Form CG 20 37.

B. *Commercial Automobile Liability Insurance.* If indicated in Schedule A and/or if vehicles are used in the provision of services under this Agreement, the Contractor shall maintain commercial automobile liability insurance for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, the commercial automobile liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

C. *Professional Liability Insurance.*

1. If indicated in Schedule A, the Contractor shall maintain and submit evidence of professional liability insurance or errors and omissions insurance appropriate to the type(s) of such services to be provided under this Agreement. The policy or policies shall cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor or anyone employed by the Contractor.

2. All subcontractors of the Contractor providing professional services under this Agreement for which professional liability insurance or errors and omissions insurance is reasonably commercially available shall also maintain such insurance in the amount specified in Schedule A. At the time of the request for subcontractor approval, the Contractor shall provide to the Department, evidence of such professional liability insurance on a form acceptable to the Department.

3. Claims-made policies will be accepted for professional liability insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

D. *Crime Insurance.* If indicated in Schedule A, the Contractor shall maintain crime insurance during the term of the Agreement in the minimum amounts listed in Schedule A. Such insurance shall include coverage, without limitation, for any and all acts of employee theft including employee theft of client property, forgery or alteration, inside the premises (theft of money and securities), inside the premises (robbery or safe burglary of other property), outside the premises, computer fraud, funds transfer fraud, and money orders and counterfeit money. The policy shall name the Contractor as named insured and shall list the City as loss payee as its interests may appear.

E. *Cyber Liability Insurance.* If indicated in Schedule A, the Contractor shall maintain cyber liability insurance covering losses arising from operations under this Agreement in the amounts listed in Schedule A. The City shall approve the policy (including exclusions therein), coverage amounts, deductibles or self-insured retentions, and premiums, as well as the types of losses covered, which may include but not be limited to: notification costs, security monitoring costs, losses resulting from identity theft, and other injury to third parties. If additional insured status is commercially available under the Contractor's cyber liability insurance, the insurance shall cover the City, together with its respective officials and employees, as additional insured.

F. *Other Insurance.* The Contractor shall provide such other types of insurance in the amounts specified in Schedule A.

#### **Section 7.04 General Requirements for Insurance Coverage and Policies**

A. Unless otherwise stated, all insurance required by Section 7.03 of this Agreement must:

1. be provided by companies that may lawfully issue such policies;
2. have an A.M. Best rating of at least A- / VII, a Standard & Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department; and
3. be primary (and non-contributing) to any insurance or self-insurance maintained by the City (not applicable to professional liability insurance/errors and omissions insurance) and any other entity listed as an additional insured in Schedule A.

B. The Contractor shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles or self-insured retentions to which such policies are subject, whether or not the City is an insured under the policy.

C. There shall be no self-insurance program, including a self-insurance retention, exceeding \$10,000.00, with regard to any insurance required under Section 7.03 unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City and any other additional insured listed on Schedule A with all rights that would be provided by traditional insurance required under this Article 7, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

D. The limits of coverage for all types of insurance for the City, including its officials and employees, and any other additional insured listed on Schedule A that must be provided to such additional insured(s) shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the Contractor as named insured under all primary, excess, and umbrella policies of that type of coverage.

**Section 7.05 Proof of Insurance**

A. For each policy required under Section 7.03 and Schedule A of this Agreement, the Contractor shall file proof of insurance and, where applicable, proof that the City, including its officials and employees, is an additional insured with the Department within ten Days of award of this Agreement. The following proof is acceptable:

1. A certificate of insurance accompanied by a completed certification of insurance broker or agent (included in Schedule A of this Agreement) and any endorsements by which the City, including its officials and employees, have been made an additional insured; or

2. A copy of the insurance policy, including declarations and endorsements, certified by an authorized representative of the issuing insurance carrier.

B. Proof of insurance confirming renewals of insurance required under Section 7.03 must be submitted to the Department prior to the expiration date of the coverage. Such proof must meet the requirements of Section 7.05(A).

C. The Contractor shall provide the City with a copy of any policy required under this Article 7 upon the demand for such policy by the Commissioner or the New York City Law Department.

D. Acceptance by the Commissioner of a certificate or a policy does not excuse the Contractor from maintaining policies consistent with all provisions of this Article 7 (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

E. If the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article 7 shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the address referred to in Section 14.04 and Schedule A and to the New York City Comptroller, Attn: Office

of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

**Section 7.06 Miscellaneous**

A. Whenever notice of loss, damage, occurrence, accident, claim, or suit is required under a policy required by Section 7.03 and Schedule A, the Contractor shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where the Contractor may not be covered under such policy if this Agreement requires that the City be an additional insured (for example, where one of Contractor's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured on Schedule A) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. The Contractor shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. If the Contractor fails to comply with the requirements of this paragraph, the Contractor shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured on Schedule A for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured on Schedule A.

B. The Contractor's failure to maintain any of the insurance required by this Article 7 and Schedule A shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

C. Insurance coverage in the minimum amounts required in this Article 7 shall not relieve the Contractor or its subcontractors of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or Law.

D. With respect to insurance required by Section 7.03 and Schedule A (but not including professional liability/errors and omissions insurance), the Contractor waives all rights against the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A for any damages or losses that are covered under any insurance required under this Article 7 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to maintain insurance with regard to any operations under this Agreement and requires such subcontractor to list the Contractor as an additional insured under such insurance, the Contractor shall ensure that such

entity also list the City, including its officials and employees, and any other entity listed as an additional insured on Schedule A as an additional insured. With respect to commercial general liability insurance, such coverage must be at least as broad as the most recently issued ISO form CG 20 26.

## **ARTICLE 8 - PROTECTION OF PERSONS AND PROPERTY AND INDEMNIFICATION**

### **Section 8.01 Reasonable Precautions**

The Contractor shall take all reasonable precautions to protect all persons and the property of the City and of others from injury, damage, or loss resulting from the Contractor's and/or its subcontractors' operations under this Agreement.

### **Section 8.02 Protection of City Property**

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, where such loss or damage is caused by negligence, any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

### **Section 8.03 Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages on account of any injuries or death to any person or damage to any property, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any of the operations of the Contractor and/or its subcontractors under this Agreement to the extent resulting from any negligent act of commission or omission, any intentional tortious act, and/or the failure to comply with Law or any of the requirements of this Agreement. Insofar as the facts or Law relating to any of the foregoing would preclude the City or its officials or employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

### **Section 8.04 Infringement Indemnification**

To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City, including its officials and employees, against any and all claims (even if the allegations of the claim are without merit), judgments for damages, and costs and expenses to which the City or its officials or employees, may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade



secret, trademark or patent or any other property or personal right of any third party by the Contractor and/or its employees, agents, or subcontractors in the performance of this Agreement. To the fullest extent permitted by Law, the Contractor shall defend, indemnify, and hold harmless the City and its officials and employees regardless of whether or not the alleged infringement, violation, or unauthorized use arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any of the foregoing would preclude the City and its officials and employees from being completely indemnified by the Contractor, the City and its officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

**Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation**

The Contractor's obligation to indemnify, defend and hold harmless the City and its officials and employees shall neither be (i) limited in any way by the Contractor's obligations to obtain and maintain insurance under this Agreement, nor (ii) adversely affected by any failure on the part of the City or its officials or employees to avail themselves of the benefits of such insurance.

**Section 8.06 Actions By or Against Third Parties**

A. If any claim is made or any action brought in any way relating to Agreement other than an action between the City and the Contractor, the Contractor shall diligently render to the City without additional compensation all assistance that the City may reasonably require of the Contractor.

B. The Contractor shall report to the Department in writing within five business days of the initiation by or against the Contractor of any legal action or proceeding relating to this Agreement.

**Section 8.07 Withholding of Payments**

A. If any claim is made or any action is brought against the City for which the Contractor may be required to indemnify the City pursuant to this Agreement, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the said claim or action.

B. If any City property is lost or damaged as set forth in Section 8.02, except for normal wear and tear, the City shall have the right to withhold payments under this Agreement for the purpose of set-off in sufficient sums to cover such loss or damage.

C. The City shall not, however, impose a set-off in the event that an insurance company that provided insurance pursuant to Section 7.03 above has accepted the City's tender of the claim or action without a reservation of rights.

D. The Department may, at its option, withhold for purposes of set-off any monies due to the Contractor under this Agreement up to the amount of any disallowances or questioned costs resulting from any audits of the Contractor or to the amount of any overpayment to the Contractor with regard to this Agreement.

E. The rights and remedies of the City provided for in this Section 8.07 are not exclusive and are in addition to any other rights and remedies provided by Law or this Agreement.

**Section 8.08 No Third Party Rights**

The provisions of this Agreement shall not be deemed to create any right of action in favor of third parties against the Contractor or the City or their respective officials and employees.

**ARTICLE 9 - CONTRACT CHANGES**

**Section 9.01 Contract Changes**

Changes to this Agreement may be made only as duly authorized by the ACCO or his or her designee and in accordance with the PPB Rules. Any amendment or change to this Agreement shall not be valid unless made in writing and signed by authorized representatives of both parties. The Contractor deviates from the requirements of this Agreement without a duly approved and executed change order document or written contract modification or amendment at its own risk.

**Section 9.02 Changes Through Fault of Contractor**

If any change is required in the data, documents, deliverables, or other services to be provided under this Agreement because of negligence or error of the Contractor, no additional compensation shall be paid to the Contractor for making such change, and the Contractor is obligated to make such change without additional compensation.

**ARTICLE 10 - TERMINATION, DEFAULT, REDUCTIONS IN FUNDING, AND LIQUIDATED DAMAGES**

**Section 10.01 Termination by the City Without Cause**

A. The City shall have the right to terminate this Agreement, in whole or in part, without cause, in accordance with the provisions of Section 10.05.

B. In its sole discretion, the City shall have the right to terminate this Agreement, in whole or in part, upon the request of the Contractor to withdraw from the Contract, in accordance with the provisions of Section 10.05.

C. If the City terminates this Agreement pursuant to this Section 10.01, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date set by the City pursuant to Section 10.05. The City shall pay for services provided in accordance with this Agreement prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.02 Reductions in Federal, State, and/or City Funding**

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section 10.02(A) shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Section 10.02(A), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

C. If the City reduces funding pursuant to this Section 10.02, the following provisions apply. The City shall pay for services provided in accordance with this Agreement prior to the reduction date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of reduction and falling due after the reduction date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of

the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this Section 10.02 shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this Agreement as appropriate.

**Section 10.03 Contractor Default**

A. The City shall have the right to declare the Contractor in default:

1. Upon a breach by the Contractor of a material term or condition of this Agreement, including unsatisfactory performance of the services;

2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;

3. If the Contractor refuses or fails to proceed with the services under the Agreement when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;

b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;

c. a criminal violation of any state or federal antitrust law;

d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. §§ 1961 *et seq.*, or the Mail Fraud Act, 18 U.S.C. §§ 1341 *et seq.*, for acts in connection with the submission of bids or proposals for a public or private contract;

e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or

f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

5. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or

6. If the Contractor or any of its officers, directors, partners, five percent or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section 10.03.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section 10.03. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five business days’ notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

D. After the opportunity to be heard, the Commissioner may terminate the Agreement, in whole or in part, upon finding the Contractor in default pursuant to this Section 10.03, in accordance with the provisions of Section 10.05.

E. The Commissioner, after declaring the Contractor in default, may have the services under the Agreement completed by such means and in such manner, by contract with or without public letting, or otherwise, as he or she may deem advisable in accordance with applicable PPB Rules. After such completion, the Commissioner shall certify the expense incurred in such completion, which shall include the cost of re-letting. Should the expense of such completion, as certified by the Commissioner, exceed the total sum which would have been payable under the Agreement if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the Commissioner, and any liquidated damages assessed against the Contractor, may be charged against and deducted out of monies earned by the Contractor.

**Section 10.04 Force Majeure**

A. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.

B. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.

F. If the City terminates the Agreement pursuant to this Section 10.04, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

**Section 10.05 Procedures for Termination**

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section 10.05 and Section 14.04. For termination without cause, the effective date of the termination shall not be less than ten Days from the date the notice is personally delivered, or 15 Days from the date the notice is either sent by certified mail, return receipt requested, delivered by overnight or same day courier service in a properly addressed envelope with confirmation, or sent by email and, unless the receipt of the email is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

B. Upon termination or expiration of this Agreement, the Contractor shall comply with the City close-out procedures, including but not limited to:

1. Accounting for and refunding to the Department, within 45 Days, any unexpended funds which have been advanced to the Contractor pursuant to this Agreement;
2. Furnishing within 45 Days an inventory to the Department of all equipment, appurtenances and property purchased through or provided under this Agreement and carrying out any Department or City directive concerning the disposition of such equipment, appurtenances and property;
3. Turning over to the Department or its designees all books, records, documents and material specifically relating to this Agreement that the Department has requested be turned over;
4. Submitting to the Department, within 90 Days, a final statement and report relating to the Agreement. The report shall be made by a certified public accountant or a licensed public accountant, unless the Department waives, in writing, the requirement that a certified public accountant or licensed public accountant make such report; and
5. Providing reasonable assistance to the Department in the transition, if any, to a new contractor.

**Section 10.06 Miscellaneous Provisions**

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section 10.06, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. 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 the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

C. The rights and remedies of the City provided in this Article 10 shall not be exclusive and are in addition to all other rights and remedies provided by Law or under this Agreement.

**Section 10.07 Liquidated Damages**

If Schedule A or any other part of this Agreement includes liquidated damages for failure to comply with a provision of this Agreement, the sum indicated is fixed and agreed as the liquidated damages that the City will suffer by reason of such noncompliance and not as a penalty.

**ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER**

**Section 11.01 Prompt Payment**

A. The prompt payment provisions of PPB Rule § 4-06 are applicable to payments made under this Agreement. With some exceptions, the provisions generally require the payment to the Contractor of interest on payments made after the required payment date, as set forth in the PPB Rules.

B. The Contractor shall submit a proper invoice to receive payment, except where the Agreement provides that the Contractor will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

C. Determination of interest due will be made in accordance with the PPB Rules and the applicable rate of interest shall be the rate in effect at the time of payment.

**Section 11.02 Electronic Funds Transfer**

A. In accordance with Admin. Code § 6-107.1, the Contractor agrees to accept payments under this Agreement from the City by electronic funds transfer. An electronic funds transfer is any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Prior to the first payment made under this Agreement, the Contractor shall designate one financial institution or other authorized payment agent and shall complete the "EFT Vendor Payment Enrollment Form" available from the Agency or at <http://www.nyc.gov/dof> in order to provide the commissioner of the Department of Finance with information necessary for the Contractor to receive electronic funds transfer payments through the designated financial institution or authorized payment agent. The crediting of the amount of a payment to the appropriate account on the books of a financial institution or other authorized payment agent designated by the Contractor shall constitute full satisfaction by the City for the amount of the payment under this Agreement. The account information supplied by the Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section 11.02 to payments on contracts entered into pursuant to Charter § 315. In addition, the



commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Department may waive the requirements of this Section 11.02 for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

- C. This Section 11.02 is applicable to contracts valued at \$25,000.00 and above.

## **ARTICLE 12 - CLAIMS**

### **Section 12.01 Choice of Law**

This Agreement shall be deemed to be executed in the City and State 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 (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

### **Section 12.02 Jurisdiction and Venue**

Subject to Section 12.03, the parties agree that any and all claims asserted by or against the City arising under or related to this Agreement shall solely be heard and determined either in the courts of the United States located in the City or in the courts of the State located in the City and County of New York. The parties shall consent to the dismissal and/or transfer of any claims asserted in any other venue or forum to the proper venue or forum. If the Contractor initiates any action in breach of this Section 12.02, the Contractor shall be responsible for and shall promptly reimburse the City for any attorneys' fees incurred by the City in removing the action to a proper court consistent with this Section 12.02.

### **Section 12.03 Resolution of Disputes**

A. Except as provided in Subparagraphs (A)(1) and (A)(2) below, all disputes between the City and the Contractor that arise under, or by virtue of, this Agreement shall be finally resolved in accordance with the provisions of this Section 12.03 and PPB Rule § 4-09. This procedure shall be the exclusive means of resolving any such disputes.

1. This Section 12.03 shall not apply to disputes concerning matters dealt with in other sections of the PPB Rules or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software, or to termination other than for cause.

2. For construction and construction-related services this Section 12.03 shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's

work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section 12.03 shall not apply to termination of the Agreement for cause or other than for cause.

B. All determinations required by this Section 12.03 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 12.03 shall be deemed a non-determination without prejudice that will allow application to the next level.

C. During such time as any dispute is being presented, heard, and considered pursuant to this Section 12.03, the Agreement terms shall remain in full force and effect and, unless otherwise directed by the ACCO or Engineer, the Contractor shall continue to perform work in accordance with the Agreement and as directed by the ACCO or City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. Failure of the Contractor to continue the work as directed shall constitute a waiver by the Contractor of any and all claims being presented pursuant to this Section 12.03 and a material breach of contract.

D. Presentation of Dispute to Agency Head.

1. Notice of Dispute and Agency Response. The Contractor shall present its dispute in writing ("Notice of Dispute") to the Agency Head within the time specified herein, or, if no time is specified, within 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 Agreement. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the Contractor relies in support of its position, as well as a detailed computation demonstrating how any amount of money claimed by the Contractor in the dispute was arrived at. Within 30 Days after receipt of the complete Notice of Dispute, the ACCO or, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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. Willful failure of the Contractor to produce any requested material whose relevancy the Contractor has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the Contractor of its claim.

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section 12.03 as the Contractor initiating the dispute.

3. Agency Head Determination. Within 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 Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, 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 Contract Dispute Resolution Board ("CDRB") pursuant to this Section 12.03. The City may not take a petition to the CDRB. However, should the Contractor take such a petition, the City may seek, and the CDRB may render, a determination less favorable to the Contractor 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 Contractor to the CDRB, the Contractor 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 30 Days of receipt of a decision by the Agency Head, the Contractor shall submit to the Comptroller and to the Agency Head a Notice of Claim regarding its dispute with the Agency. The Notice of Claim shall consist of (i) a brief statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the Contractor contends the dispute was wrongly decided by the Agency Head; (ii) a copy of the decision of the Agency Head; and (iii) a copy of all materials submitted by the Contractor to the Agency, including the Notice of Dispute. The Contractor may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

2. Agency Response. Within 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 Admin. Code §§ 7-201 and 7-203. In addition, the Comptroller may demand of either party, and such party shall provide, whatever additional material the Comptroller deems pertinent to the claim, including original business records of the Contractor. Willful failure of the Contractor to produce within 15 Days any material requested by the Comptroller shall constitute a waiver by the Contractor of its claim. The Comptroller may also schedule an informal conference to be attended by the Contractor, Agency representatives, and any other personnel desired by the Comptroller.

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

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section 12.03 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 City Chief Procurement Officer ("CCPO") or his or 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 12.03, the Contractor, within thirty (30) Days thereafter, may petition the CDRB to review the Agency Head determination.

1. Form and Content of Petition by the Contractor. The Contractor 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 Contractor 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 Contractor 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 Contractor to, the Comptroller's Office. The Contractor 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 Contractor 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 30 Days of receipt of the petition by the Corporation Counsel, the Agency shall respond to the statement of the Contractor 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 Contractor. Extensions of time for submittal of the Agency response shall be given as necessary upon a showing of good cause or, upon the consent of the parties, for an initial period of up to 30 Days.

3. Further Proceedings. The CDRB shall permit the Contractor to present its case by submission of memoranda, briefs, and oral argument. The CDRB shall also permit the Agency to present its case in response to the Contractor by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the Comptroller shall provide reasonable assistance in the preparation of the Agency's case. Neither the Contractor nor the Agency may support its case with any documentation or other material that was not considered by the Comptroller, unless requested by the 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 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 90 Days, and shall so advise the parties at the commencement of this period. The CDRB's decision must be consistent with the terms of this Agreement. 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 Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be 30 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 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 PPB Rules § 4-09.

H. Any termination, cancellation, or alleged breach of the Agreement prior to or during the pendency of any proceedings pursuant to this Section 12.03 shall not affect or impair the ability of the Agency Head or CDRB to make a binding and final decision pursuant to this Section 12.03.

#### **Section 12.04 Claims and Actions**

A. Any claim, that is not subject to dispute resolution under the PPB Rules or this Agreement, against the City for damages for breach of contract shall not be made or asserted in any action, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six months after the final payment under this Agreement, or within six months of the termination or expiration of this Agreement, or within six months after the accrual of the cause of action, whichever first occurs.

#### **Section 12.05 No Claim Against Officials, Agents, or Employees**

No claim shall be made by the Contractor against any official, agent, or employee of the City in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

**Section 12.06 General Release**

The acceptance by the Contractor or its assignees of the final payment under this Agreement, whether by check, wire transfer, or other means, and whether pursuant to invoice, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a release of the City from any and all claims of and liability to the Contractor, of which the Contractor was aware or should reasonably have been aware, arising out of the performance of this Agreement based on actions of the City prior to such acceptance of final payment, excepting any disputes that are the subject of pending dispute resolution procedures.

**Section 12.07 No Waiver**

Waiver by either the Department or the Contractor of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by the parties as set forth in Section 9.01.

**ARTICLE 13 - APPLICABLE LAWS**

**Section 13.01 PPB Rules**

This Agreement is subject to the PPB Rules. If there is a conflict between the PPB Rules and a provision of this Agreement, the PPB Rules shall take precedence.

**Section 13.02 All Legal Provisions Deemed Included**

Each and every provision required by Law to be inserted in this Agreement is hereby deemed to be a part of this Agreement, whether actually inserted or not.

**Section 13.03 Severability / Unlawful Provisions Deemed Stricken**

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 of this Agreement, the unlawful provision 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.

**Section 13.04 Compliance With Laws**

The Contractor shall perform all services under this Agreement in accordance with all applicable Laws as are in effect at the time such services are performed.

**Section 13.05 Unlawful Discrimination in the Provision of Services**

A. *Discrimination in Public Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

B. *Discrimination in Housing Accommodations.* With respect to services provided under this Agreement, the Contractor shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, partnership status, marital status, presence of children, disability, presence of a service or emotional support animal, race, color, national origin, alienage or citizenship status, lawful occupation, or lawful source of income (including income derived from social security, or any form of federal, state, or local public government assistance or housing assistance including Section 8 vouchers), or any other class of individuals protected from discrimination in housing accommodations by City, State or Federal laws, rules or regulations. The Contractor shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

C. *Admin. Code § 6-123.* In accordance with Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the Admin. Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of \$50,000.00 that such subcontractor shall not engage in any such unlawful discriminatory practice.

D. *Immigration status.* In connection with the services provided under this Agreement, the Contractor shall not inquire about the immigration status of a recipient or potential recipient of such services unless (i) it is necessary for the determination of program, service or benefit eligibility or the provision of City services or (ii) the Contractor is required by law to inquire about such person's immigration status.

**Section 13.05 Americans with Disabilities Act (ADA)**

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the



Contractor's compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). If the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

B. The Contractor's failure to either submit a Compliance Plan as required herein or implement an approved Compliance Plan may be deemed a material breach of this Agreement and result in the City terminating this Agreement.

### **Section 13.06 Voter Registration**

A. *Participating Agencies.* Pursuant to Charter § 1057-a, if this Agreement is made by and through a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.06. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Civilian Complaint Review Board; the Commission on Human Rights; Community Boards; SBS; the Department of Citywide Administrative Services; the Department of Consumer Affairs; the Department of Correction; the Department of Environmental Protection; the Department of Finance; the Department of Health and Mental Hygiene; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Parks and Recreation; the Department of Probation; the Taxi and Limousine Commission; the Department of Transportation; and the Department of Youth and Community Development.

B. *Distribution of Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor, if it has regular contact with the public in the daily administration of its business under this Agreement, hereby agrees as follows:

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of

supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

3. The Contractor shall, subject to approval by the Department, incorporate an opportunity to request a voter registration application into any application for services, renewal, or recertification for services and change of address relating to such services provided on computer terminals, the World Wide Web or the Internet. Any person indicating that they wish to be sent a voter registration form via computer terminals, the World Wide Web or the Internet shall be sent such a form by the Contractor or be directed, in a manner subject to approval by the Department, to a link on that system where such a form may be downloaded.

4. The Contractor shall, at the earliest practicable or next regularly scheduled printing of its own forms, subject to approval by the Department, physically incorporate the voter registration forms with its own application forms in a manner that permits the voter registration portion to be detached therefrom. Until such time when the Contractor amends its form, the Contractor should affix or include a postage-paid City Board of Elections voter registration form to or with its application, renewal, recertification, and change of address forms.

5. The Contractor shall prominently display in its public office, subject to approval by the Department, promotional materials designed and approved by the City or State Board of Elections.

6. For the purposes of Paragraph A of this Section 13.06, the word "Contractor" shall be deemed to include subcontractors having regular contact with the public in the daily administration of their business.

7. The provisions of Paragraph A of this Section 13.06 shall not apply to services that must be provided to prevent actual or potential danger to life, health, or safety of any individual or of the public.

C. *Assistance in Completing Voter Registration Forms.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. In the event the Department provides assistance in completing distributed voter registration forms, the Contractor shall also provide such assistance, in the manner and to the extent specified by the Department.

2. In the event the Department receives and transmits completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall similarly provide such service, in the manner and to the extent specified by the Department.

3. If, in connection with the provision of services under this Agreement, the Contractor intends to provide assistance in completing distributed voter registration forms or to receive and transmit completed registration forms from applicants who wish to have the forms transmitted to the City Board of Elections, the Contractor shall do so only by prior arrangement with the Department.

4. The provision of Paragraph B services by the Contractor may be subject to Department protocols, including protocols regarding confidentiality.

D. *Required Statements.* In accordance with Charter § 1057-a, the Contractor hereby agrees as follows:

1. The Contractor shall advise all persons seeking voter registration forms and information, in writing together with other written materials provided by the Contractor or by appropriate publicity, that the Contractor's or government services are not conditioned on being registered to vote.

2. No statement shall be made and no action shall be taken by the Contractor or an employee of the Contractor to discourage an applicant from registering to vote or to encourage or discourage an applicant from enrolling in any particular political party.

3. The Contractor shall communicate to applicants that the completion of voter registration forms is voluntary.

4. The Contractor and the Contractor's employees shall not:

a. seek to influence an applicant's political preference or party designation;

b. display any political preference or party allegiance;

c. make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

d. make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

E. The Contractor, as defined above and in this Agreement, agrees that the covenants and representations in this Section 13.06 are material conditions of this Agreement.

F. The provisions of this Section 13.06 do not apply where the services under this Agreement are supported by a federal or State grant of funds and the source of funds prohibits the use of federal or State funds for the purposes of this Section.

**Section 13.07 Political Activity**

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 13.08 Religious Activity**

There shall be no religious worship, instruction, or proselytizing as part of or in connection with the Contractor's provision of services under this Agreement, nor shall any of the funds provided under this Agreement be used for such purposes.

**Section 13.09 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 federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 *et seq.*, or 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, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

C. The Contractor shall comply in all respects, with the provisions of Admin. Code § 6-114 and the rules issued by the Comptroller thereunder.

**Section 13.10 MacBride Principles**

A. In accordance with and to the extent required by Admin. Code § 6-115.1, the Contractor stipulates that the Contractor and any individual or legal entity in which the Contractor holds a ten percent (10%) or greater ownership interest and any individual or legal entity that holds a ten percent (10%) or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

B. The Contractor agrees that the covenants and representations in Paragraph A above are material conditions to this Agreement.

C. This Section does not apply if the Contractor is a not-for-profit corporation.

**Section 13.11 Access to Public Health Insurance Coverage Information**

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section 13.11 applies as provided in Paragraph B of this Section 13.11, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section 13.11. The participating City agencies are: the Administration for Children’s Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. Applicability to Certain Contractors. This Section 13.11 shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000.00 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. “Contractors” to whom this Section 13.11 applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor’s contractual obligation.

C. Distribution of Public Health Insurance Pamphlet. In accordance with Charter § 1069, when the participating City agency supplies the Contractor with the public health insurance program options pamphlet published by the Department of Health and Mental Hygiene pursuant to Section 17-183 of the Admin. Code (hereinafter “pamphlet”), the Contractor hereby agrees as follows:

1. The Contractor will distribute the pamphlet to all persons requesting a written application for services, renewal or recertification of services or request for a change of address relating to the provision of services.

2. The Contractor will include a pamphlet with any Contractor communication sent through the United States mail for the purpose of supplying an individual with a written application for services, renewal or recertification of services or with a request for a change of address form relating to the provision of services.

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such

pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

4. The Contractor will ensure that its employees do not make any statement to an applicant for services or client or take any action the purpose or effect of which is to lead the applicant or client to believe that a decision to request public health insurance or a pamphlet has any bearing on their eligibility to receive or the availability of services or benefits.

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter § 1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

D. Non-applicability to Certain Services. The provisions of this Section 13.11 shall not apply to services that must be provided to prevent actual or potential danger to the life, health or safety of any individual or to the public.

### **Section 13.12 Distribution of Personal Identification Materials**

A. Participating Agencies. Pursuant to City Executive Order No. 150 of 2011 (“E.O. 150”), if this Agreement is with a participating City agency and the Contractor has regular contact with the public in the daily administration of its business, the Contractor must comply with the requirements of this Section 13.12. The participating City agencies are: Administration for Children’s Services, Department of Consumer Affairs, Department of Correction, Department of Health and Mental Hygiene, Department of Homeless Services, Department of Housing Preservation and Development, Human Resources Administration, Department of Parks and Recreation, Department of Probation, and Department of Youth and Community Development.

B. Policy. As expressed in E.O. 150, it is the policy of the City to provide information to individuals about how they can obtain the various forms of City, State, and Federal government-issued identification and, where appropriate, to assist them with the process for applying for such identification.

C. Distribution of Materials. If the Contractor has regular contact with the public in the daily administration of its business, the Contractor hereby agrees to provide and distribute materials and information related to whether and how to obtain various forms of City, State, and Federal government-issued identification as the Agency directs in accordance with the Agency’s plans developed pursuant to E.O. 150.

## ARTICLE 14 - MISCELLANEOUS PROVISIONS

### Section 14.01 Conditions Precedent

A. This Agreement shall be neither binding nor effective unless and until it is registered pursuant to Charter § 328.

B. The requirements of this Section 14.01 shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

### Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to modify any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

### Section 14.03 Headings

Headings are inserted only as a matter of convenience and therefore are not a part of and do not affect the substance of this Agreement.

### Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses and email addresses specified in Schedule A (and if not specified in Schedule A, as specified at the beginning of this Agreement) 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. Either party may change its notice address 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 below.

B. Any notice, direction, or communication from either party to the other shall be in writing and shall be deemed to have been given when (i) delivered personally; (ii) sent by certified mail, return receipt requested; (iii) delivered by overnight or same day courier service in a properly addressed envelope with confirmation; or (iv) sent by email and, unless receipt of the e-mail is acknowledged by the recipient by email, deposited in a post office box regularly maintained by the United States Postal Service in a properly addressed, postage pre-paid envelope.

C. Nothing in this Section 14.04 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, including the New York Civil Practice Law and Rules.



**SCHEDULE A**

<b>Article 7 -- Insurance</b>	
<b>Types of Insurance (per Article 7 in its entirety, including listed paragraph)</b>	<b>Minimum Limits and Special Conditions</b>
<ul style="list-style-type: none"> <li>■ Workers' Compensation §7.02</li> <li>■ Disability Benefits Insurance §7.02</li> <li>■ Employers' Liability §7.02</li> </ul>	Statutory amounts.
<ul style="list-style-type: none"> <li>■ Commercial General Liability §7.03(A)</li> </ul>	<p><u>\$1,000,000.00</u> per occurrence</p> <p><u>\$1,000,000.00</u> personal &amp; advertising injury (unless waived in writing by the Department)</p> <p><u>\$2,000,000.00</u> aggregate</p> <p><u>\$0</u> products/completed operations</p> <p>Additional Insureds:</p> <p>1. City of New York, including its officials and employees.</p>
<ul style="list-style-type: none"> <li>■ Commercial Auto Liability §7.03(B)</li> </ul>	<p><u>\$1,000,000.00</u> per accident combined single limit</p> <p>If vehicles are used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.</p>
<b>Section 10.07 – Liquidated Damages</b>	
<ul style="list-style-type: none"> <li>• Violation of Section 3.02(H), reporting subcontractors in the City's Payee Information Portal</li> </ul>	<b>\$100 per day</b>
<b>Section 14.04 – Notice</b>	
Department's Mailing Address and Email Address for Notices	New York City Department of Sanitation Bureau of Cleaning and Collection Cheryl Schlesinger, Director

**Appendix A January 2018 Final**

---

	125 Worth Street New York, NY 10013 <a href="mailto:cschlesi@dny.nyc.gov">cschlesi@dny.nyc.gov</a>
--	--

**WHISTLEBLOWER PROTECTION EXPANSION ACT POSTER**



**REPORT**  
***CORRUPTION, FRAUD, UNETHICAL CONDUCT***  
**RELATING TO A NYC-FUNDED CONTRACT**  
**OR PROJECT**  
**CALL THE NYC DEPARTMENT OF INVESTIGATION**  
**212-825-5959**

DOI CAN ALSO BE REACHED BY MAIL  
OR IN PERSON AT:  
New York City Department of  
Investigation (DOI)  
80 Maiden Lane, 17th floor  
New York, New York 10038  
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:  
[www.nyc.gov/doi](http://www.nyc.gov/doi)

All communications are confidential



Or scan the QR Code above  
to make a complaint

**THE LAW PROTECTS EMPLOYEES OF  
CITY CONTRACTORS WHO REPORT CORRUPTION**

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- **To be protected by this law**, an employee must report to DOI – or to certain other specified government officials – information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the contractor and recover damages

**EXHIBIT G:**

**Iran Divestment Act Compliance Rider**

PIN: 82721CC0003

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

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

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

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

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

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

CONTRACT NO. \_\_\_\_\_

---

**THE CITY OF NEW YORK  
DEPARTMENT OF SANITATION**

---

**CONTRACT TO HIRE EQUIPMENT  
WITH OPERATORS FOR SNOW  
REMOVAL EMERGENCIES  
FOR THE 2020-21, 2021-22, AND 2022-23  
WINTER SEASONS**

**PIN: 82721CC0003**

---

\_\_\_\_\_  
Contractor's Name

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

---

Assigned to \_\_\_\_\_

---

**APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY**

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

Dated \_\_\_\_\_, \_\_\_\_\_

---

**EXAMINED AND FOUND CORRECT**

\_\_\_\_\_  
Contract Clerk  
Comptroller

---

**ENTERED IN THE COMPTROLLER'S OFFICE**

Dated \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
First Assistant Bookkeeper

---