



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

141 Flushing Ave
Building 77, Unit 801
Brooklyn, NY 11205

REQUEST FOR PROPOSALS

Services Pertaining to Insurance Consulting Services for the Brooklyn Navy Yard Development Corporation

Release Date: October 22, 2024
Indications of Interest: November 7, 2024
Submission Deadline: November 26, 2024

Contact Information:

Evelyn Fanneron
Assistant General Counsel
insuranceservicesrfp@bnydc.org

A. EXECUTIVE SUMMARY

The Brooklyn Navy Yard Development Corporation (“BNYDC”, or the “Corporation”) is pleased to invite you to submit a proposal in response to this Request for Proposals (“RFP”). Entities responding to this RFP may hereafter be referred to as “Proposers” or “Respondents”. The services to be performed are outlined in this summary along with such other information as the anticipated dates for the execution of a contract, if one is awarded pursuant to this RFP, and the anticipated contract term. Any Proposer or Respondent who is awarded a contract pursuant to this RFP (hereafter, a “Contract”) may be referred to as a “Consultant”. All undefined capitalized terms set forth in this RFP shall have the same definitions as set forth in Appendix A to Part III of the draft Contract (the “Contract Draft”) annexed to this RFP as Exhibit J.

BNYDC is seeking a Consultant to provide Insurance Consulting Services, as more specifically described in the Scope of Services (Exhibit D of this RFP) hereafter, the “Services” or “Scope of Services”. Please note that the Corporation is seeking the Services to assist the Corporation in analyzing risks and purchasing the appropriate types of insurance policies for appropriate policy limits at competitive premium rates. The Corporation is not seeking insurance brokerage services pursuant to this RFP. The Corporation is seeking an independent consultant who (i) does not have an exclusive relationship with any particular insurance company or broker, and (ii) has strong relationships with various insurance companies and brokers who specialize in the types of policies to be procured and maintained by the Corporation.



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The Consultant shall be experienced in all aspects of the Services. To be qualified, the Consultant should have a minimum of ten years' experience in:

- Providing insurance consulting services including by analyzing risks and planning, designing, negotiating and implanting comprehensive insurance programs;
- Obtaining, either through the use of brokers or through direct interactions with insurers, or both, cost-effective coverages for facilities and companies of a similar size and nature comparable to BNYDC, including reflecting a combination of the following factors: (i) campus-like facilities with numerous buildings and structures, (ii) governmental or quasi-governmental agencies and organizations, and/or (iii) urban industrial and waterfront properties;
- Having strong relationships with various insurance companies and brokers that specialize in the types of coverages to be procured and maintained by the Corporation;
- Obtaining coverages for and providing insurance consulting services to governmental agencies, authorities and not-for-profit organizations; and
- Performing all such services with speed and accuracy.

The Consultant will commence the Services upon execution of the Contract by the Consultant and BNYDC substantially in the form of the Contract Draft. The Contract is expected to be executed on or around December 20, 2024, covering a three-year term from January 2025 through December 2028. BNYDC will have the option to extend the Contract Term for up to two one-year Extension Periods, as further described in Part 1, Section 4 of the Contract Draft.

The Contract Draft is an initial draft subject to further review and revision by BNYDC prior to execution. BNYDC shall not be bound to the terms of any aspect of the Contract Draft, and the final acceptance of any successful proposal shall be subject to, and contingent upon, the negotiation between the parties of a Contract in form and substance acceptable to BNYDC. Nevertheless, as further detailed below, Respondents should review the Contract Draft and note any desired material changes to the Contract Draft in its RFP response.

Locally Based Enterprises ("LBEs") and Minority-and Women-owned Businesses ("MWBEs") are encouraged to respond to this RFP. Respondents are also encouraged, to the extent they plan to engage subconsultants, to include LBEs and MWBEs as subconsultants. Each Respondent must identify in its proposal whether it or, if applicable, any of its proposed subconsultants are LBEs or MWBEs.



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This RFP contains the following:

- A. Executive Summary
- B. Pertinent Dates
- C. BNYDC Background
- D. Scope of Services
- E. Proposal Submission Requirements
- F. Proposal Administration
- G. Selection Process
- H. Services to be Performed and Work Product
- I. Doing Business Data Form Requirement
- J. Contract Conditions
- K. Miscellaneous Conditions

Exhibits:

- Exhibit A – Map of Brooklyn Navy Yard
- Exhibit B – Declaration of Understanding
- Exhibit C – Confirmation of PASSport Compliance
- Exhibit D – Scope of Services
- Exhibit E – Overview of Current Insurance Program
- Exhibit F – Doing Business Data Form
- Exhibit G – MWBE Questionnaire
- Exhibit H – Fee and Cost Schedule
- Exhibit I – Staffing Plan & Additional Cost Schedule
- Exhibit J – Draft Form of Contract

B. PERTINENT DATES

1. Indications of interest are due **5:00 pm on November 7, 2024.**
2. All questions are due no later than **5:00 PM on November 7, 2024.**
3. BNYDC anticipates that it will send responses to questions by **November 13, 2024.**
4. All Proposals are due no later than **5:00 PM on November 16, 2024.**
5. BNYDC anticipates conducting interviews on or about **December 2, 2024 through December 6, 2024.**
6. BNYDC anticipates obtaining BNYDC Board authorization to enter into a Contract on or about **December 11, 2024.**
7. BNYDC anticipates executing a Contract on or about **December 20, 2024 for a January 1, 2025 Contract commencement date.**



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C. BNYDC BACKGROUND

BNYDC is a not-for-profit corporation that serves as the real estate developer and property manager of the Brooklyn Navy Yard on behalf of its owner, the City of New York (the “City”). The 300-acre industrial park on the Brooklyn waterfront is home to over 550 businesses employing more than 13,000 people and generating over \$2.5 billion per year in economic impact for the City of New York. BNYDC’s mission is to fuel New York City’s economic vitality by creating and preserving quality jobs, growing the City’s modern industrial sector and its businesses, and connecting the local community with the economic opportunity and resources of the Yard. Further information can be found at www.brooklynnavyyard.org.

Attached as Exhibit A is a map of the Brooklyn Navy Yard.

Further background on BNYDC’s campus, current insurance program, and insurance needs are detailed in the “Project Background” section of the Scope of Services, which is attached to this RFP as Exhibit D, and the overview of BNYDC’s current insurance program, which is attached to this RFP as Exhibit E.

D. SCOPE OF SERVICES

Refer to Exhibit D for the detailed Scope of Services.

E. PROPOSAL SUBMISSION REQUIREMENTS

Each Respondent must submit its proposal no later than **5:00 PM on November 26, 2024** in accordance with the submission procedure set forth in this RFP. Respondents must submit a single PDF document containing the following information, in the order listed below, with the exception that any spreadsheets supporting the Fee and Cost Schedule may be separately attached to the email submission as an Excel document. The submission must consist of the following, which together shall be referred to as a “Proposal” in this RFP:

1. **Cover Letter (maximum 1 page):** Submit a letter summarizing the Respondent’s understanding of the Scope of Services, including the firm’s full name and address as well as the name, address and telephone number of the person authorized to represent the Respondent in all aspects of contract negotiations.
2. **Previous Experience/Qualifications:** Provide the following:
 - a. Respondent firm’s brochure along with a summary of the firm’s history, location of firm’s headquarters and the office that will administer the Services.
 - b. Examples of projects for entities similar in size and nature to the Corporation, relating to the Services. For each project, explain the specific services performed, provide a client reference with a phone number and email address, and list names of the firm’s staff assigned to the project. The Respondent’s experience is expected



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to demonstrate that the Respondent is competent in all aspects of the Services. To the extent the Respondent has provided similar services to governmental and/or quasi-governmental organizations, to campuses or campus-like facilities, or to urban industrial and/or waterfront properties, such experience should be included.

- c. Organizational chart for the firm and each sub-consultant, if applicable, indicating project staff members and their level of responsibility as well as their skill classification/function on the project, to the extent assigned staff is currently known (maximum 1 page).
 - d. Resumes for key project staff illustrating relevant experience, to the extent assigned staff is currently known (maximum 2 pages per resume).
3. **Proposed Services Approach:** Submit a brief narrative explaining the Respondent’s proposed approach to the Services that demonstrates its understanding of the Scope of Services and its ability to manage and complete the Services in a timely and efficient manner. The Proposal should include the following:
- a. Detailed description of the Respondent’s approach to complete the Scope of Services, including methodologies and division of work;
 - b. Proposed schedule for completing the Scope of Services, including critical path items, key milestones, and submission timelines (it being understood that Respondents do not have a complete renewal schedule for BNYDC’s current insurance programs);
 - c. List of subcontractors, if any, including whether the Respondent and each subcontractor is an LBE or M/WBE.
4. **Fee and Cost Schedule & Staffing Plan:**
- a. **Fee and Cost Schedule:** See Exhibit H. Each Respondent shall include a completed Fee and Cost Schedule (see Exhibit H), which shall set forth the maximum fee that will be paid to Consultant for each year of the initial three-year Contract term, as well as the maximum fee which would be payable for the first and second year Contract extension periods, if BNYDC elects to exercise such option periods.

Please note that the fees and costs to be paid to a Consultant for the provision of Services shall be for its own Services and the Services of its own Subconsultants, if



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applicable. BNYDC shall separately pay the premium costs for all its insurance policies. Accordingly, Respondents should not include any costs for insurance premiums within its proposed fee for its Services.

Respondents are free to propose in the “Proposed Billing Structure” section of [Exhibit H](#) how it proposes to bill and be paid for its Services during the Contract Term. For example, a Respondent may propose to receive monthly or quarterly payments throughout the term based on the hours worked multiplied by the applicable agreed upon hourly rates, it may also propose to be paid in twelve equal monthly installments throughout a contract year or it may propose a hybrid payment method. The method of invoicing and payments for Services rendered will be finalized in the Contract between BNYDC and the Consultant.

- b. **Staffing Plan & Additional Cost Schedule:** See [Exhibit I](#). Irrespective of the Respondent’s proposed fee and payment structure, to support the fees in Respondent’s Fee and Cost Schedule each Respondent must submit backup for its Fee and Cost Schedule calculations, including by providing a Staffing Plan and Additional Cost Schedule. Please see [Exhibit I](#) for templates for these schedules, and thoroughly review the discussion of the schedules in [Exhibit H](#). Spreadsheets submitted as part of the Staffing Plan and Additional Cost Schedules should include the names (if known) and titles of proposed personnel detailed in the Staffing Plan with anticipated hours and hourly rates, and any other costs or relevant information factored into the Respondent’s Maximum Annual Contract Amount provided in the Fee and Cost Schedule. In addition to the total proposed fee, BNYDC is interested in the numbers and seniority/experience levels of individuals proposed to work on the Services, the estimated hours for each such person, and the maximum hourly rate billable rate for each such individual. Please note that the maximum hourly billing rate for each person shall be inclusive of all multipliers for insurance, overhead, profit, etc.

Please see the Fee and Cost Schedule attached as [Exhibit H](#) and the sample Staffing Plan & Additional Cost Schedules attached as [Exhibit I](#) for further instructions.

5. **Completed Forms and Acknowledgments:** The Respondent shall attach the following:
 - a. **Declaration of Understanding:** See [Exhibit B](#).
 - b. **Confirmation of PASSport Compliance:** See [Exhibit C](#).
 - c. **Local Law 34 Doing Business Data Form:** See [Exhibit F](#).



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- d. **MWBE Questionnaire:** See Exhibit G.
- e. Acknowledged receipt of any Addendum to this RFP by attaching a signed copy of the Addendum to Respondent's Proposal.
- f. If a Respondent desires any material or substantive change(s) to the form of Contract (attached as Exhibit J hereto), Respondent must include any such proposed change(s) in its response to this RFP.

F. PROPOSAL ADMINISTRATION

1. Indications of Interest:

Potential Respondents interested in responding to this RFP must send an email indicating such interest to BNYDC to Evelyn Fanneron insuranceservicesrfp@bnydc.org on or before **5:00 pm on November 7, 2024**. Any addenda, responses to questions, or other written information or clarifications sent by BNYDC after November 7 will only be sent via email to those entities that expressed interest in responding to this RFP under this Section.

Emailing an indication of interest in accordance with this Section is required. BNYDC may elect, in its sole discretion, not to consider any indications of interest from Respondents received after that date and time.

2. Inquiries:

Any questions or explanation desired by the Respondents regarding the meaning or interpretation of this RFP must be emailed and received by BNYDC **no later than 5:00 PM on November 7, 2024**. BNYDC will evaluate the need to respond to inquiries. No verbal responses will be provided, and any answers or information to be given to a prospective Respondent will be furnished to all prospective Respondents as an addendum to the RFP (an "Addendum"). All questions must be directed in writing via email to:

Evelyn Fanneron
Assistant General Counsel
E-mail: insuranceservicesrfp@bnydc.org

3. Submission Deadline:

On the submission date, Respondents shall email a digital copy of the Proposal via email as one PDF file, including any attachments, exhibits, or appendices. Proposals shall be submitted to: insuranceservicesrfp@bnydc.org. Any Excel spreadsheets may be separately attached to the submission email. The Proposal must be received on or



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before **5:00 PM on November 26, 2024**. Any Proposal received after the deadline may be considered for evaluation solely at the discretion of BNYDC.

4. Addenda:

Receipt of any addenda to this RFP must be acknowledged by attaching a signed copy of the addendum to the Proposal. Any addenda shall become part of the requirements of this RFP.

5. Interview:

Interviews may be held with any or all of the Respondents after the receipt of proposals. Interviews with BNYDC, if applicable, will be scheduled after BNYDC's initial review of proposals, and are entirely at BNYDC's discretion. It is presently anticipated that any such interviews would be held remotely or in-person during the week beginning **December 2, 2024**.

G. SELECTION PROCESS

1. Proposal Evaluation

A BNYDC evaluation committee (the "Committee") will evaluate all proposals submitted by Respondents. Proposals will be evaluated based on the following criteria:

- (30%) The Respondent's and, as applicable, the proposed Consultant Team's experience and expertise in providing the Services contemplated under this RFP, particularly including experience in providing similar services relating to (i) the City, BNYDC, or other municipalities or governmental authorities; (ii) campuses or campus-like facilities; and (iii) industrial, manufacturing, and/or waterfront properties;
- (25%) The quality of the Respondent's management, reputation, and references and, as applicable, the quality of its the proposed Consultant Team, and the quality of the proposal and the degree to which it demonstrates the Respondent's full understanding of and the ability to perform the Services to be rendered; the quality and level of the Respondent's relationships with insurance brokers and insurance companies may be considered as one factor under this criterion;
- (15%) The terms under which the Respondent will commit the time/bandwidth of its personnel and, as applicable, the personnel of the proposed Consultant Team members, to provide the Services accurately and completely in a reasonable timeframe; favorable history, if any, in contracting or doing business with the City and/or BNYDC, and absence of any default in



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respondent's financial obligations to the City; and Respondent's willingness to accept BNYDC's form of contract with relatively few requested changes, and

- (30%) The Respondent's proposed Fee and Cost Schedule and Staffing Plan. Please see Exhibits H and I to this RFP for further information and sample schedules and plans.

2. Selection of Firm

Upon selection, a successful Respondent must execute a Contract for the Services substantially in the form attached hereto as Exhibit J. If a Respondent desires any material or substantive change(s) to the Contract Draft, then the Respondent must include any such proposed change(s) in its Proposal in response to this RFP. The contents of the selected Proposal, together with this RFP and any formal questions and answers provided during the Proposal process, may be incorporated into any final Contract at BNYDC's discretion. Please note that requesting significant or material changes to the Contract Draft is a factor which will be considered in determining a successful Respondent to this RFP.

H. **SERVICES TO BE PERFORMED AND WORK PRODUCT**

The Consultant shall perform all Services and deliver all of the Work Product specifically described in and required by the Scope of Services. Prior to submitting your proposal, please be sure that you review and fully understand the Scope of Services.

3. STAFFING

- a. **Personnel.** The Consultant shall, at its own expense, employ all personnel and retain all Subcontractors (including insurance wholesalers, insurance brokers and agents, and the subconsultants on the Consultant Team, if any) as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the Contract Term. The Consultant and its Subcontractors will be expected to cooperate fully with BNYDC personnel. The Respondent shall submit with its proposal resumes of its personnel and those of its Subcontractors who will perform the Services. The Respondent, if selected, will be expected to use substantially the same personnel and Subcontractors described in the proposal to perform the Services. All personnel furnished by the Consultant as required under the Contract shall be employees or approved Subcontractors of the Consultant and not of BNYDC or the City.
- b. **Subcontractors.** If the Consultant is authorized under the Contract to enter into subcontracts for specialized services as required for performance of the Services, such authorization shall be subject to the prior written approval by BNYDC of the Subcontractor (other than members of the Consultant Team



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which have been previously approved), the scope of services, compensation, and the principal responsible for supervising the performance of the Subcontractor's activities. The Consultant, and not BNYDC, will be responsible for the Subcontractor's work, acts and omissions. Respondents are directed to Article 4 of the Contract Draft for further information as to the requirements regarding subcontracting under the Contract.

- c. **Person in Charge.** In its proposal, Respondent shall identify the member of the Respondent's staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services and Respondent shall identify said person's back-up in case said person is unavailable.

4. COMPENSATION

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

- a. **In General.** Under the Contract, BNYDC will agree to pay to the Consultant an amount not to exceed a Maximum Contract Price to be negotiated between BNYDC and the Consultant based upon its response to this RFP. The Maximum Contract Price shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract and all expenses of the Consultant in connection therewith, including costs of any Subcontractors and inclusive of insurance wholesalers and other brokers. The Maximum Contract Price shall be payable as provided for in Sections 2.1 and 2.2 of the General Terms and Conditions (Part II) of the Contract and Appendix C (Part III of the Contract). For avoidance of doubt, BNYDC currently pays insurance premiums directly to insurance brokers or carriers and anticipates continuing this practice.
- b. **Payments.** To receive payment for Services, the Consultant will be required to submit an invoice as part of a "Requisition" under the Contract, setting forth in detail, for the period for which payment is requested, the Services actually rendered during that period and the amount of payment requested and due therefor. Further details on invoicing and payments will be set forth in the Contract. Requisitions may not be submitted more than once per month. All Requisitions shall be subject to BNYDC's review, verification and approval, and all payments shall be conditioned upon BNYDC's determination that all Services have been performed satisfactorily and in accordance with the terms of the Contract.



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

I. **DOING BUSINESS DATA FORM REQUIREMENTS.**

Pursuant to the City’s Local Law No. 34 (“LL34”), amending the City’s Campaign Finance Law, the City is required to establish a computerized database containing the names of any “person” that has “business dealings with the city”, as such terms are defined in LL34.

In order for the City to obtain information necessary to establish the required database, each Respondent must complete and return a Doing Business Data Form, attached to this RFP as Exhibit F. The submission of a Doing Business Data Form that is not accurate and complete may result in disqualification and/or appropriate sanctions. Respondents are encouraged to consult legal counsel with respect to the impact of LL34. Note that responding to this RFP constitutes “doing business with the city” under LL34.

J. **CONTRACT CONDITIONS**

Please note that many of the terms in the Contract Draft are required by law, by policies of the City, and/or the City Contract and therefore are not subject to negotiation. Examples include terms providing that the Consultant (i) is an independent contractor and that neither it nor any of its employees is or shall be an agent, servant or employee of the City or BNYDC; (ii) shall defend, indemnify and hold harmless the City and BNYDC against any claims or damages relating to its acts and omissions; (iii) shall maintain financial and other records relating to the Contract, including, without limitation, payroll records, for a period of six (6) years from the end of the Contract Term, and shall make such records available for inspection and audit; and (iv) has no conflicts of interest with, or outstanding financial obligations owing to, the City.

Additional contract requirements under this RFP include:

- a. Unless a specific exception is noted, submission of a proposal in response to this RFP shall constitute an offer on the part of the successful Respondent to execute the Contract substantially in the form annexed hereto as U.
- b. Any Respondent awarded a contract as a result of this RFP process will be required to sign a Contract with BNYDC, substantially in the form as attached hereto as Exhibit J.



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- c. Any information which may have been released verbally or in writing prior to the issuance of the RFP shall be deemed preliminary in nature and bind neither BNYDC nor the Respondent.
- d. Any Respondent awarded a contract as a result of this RFP will be required to obtain clearance through the City's Procurement and Sourcing Solutions Portal ("PASSPort"). PASSPort moves the VENDEX process online, eliminating paper submissions. Since PASSPort clearance is a pre-requisite to BNYDC's award of a contract, **Respondents should be registered and up to date in PASSPort prior to submitting their response to this RFP and to include their PASSPort identification number with submission of their Proposal as attached hereto as Exhibit C**. Non-compliance with these submission requirements shall result in the disqualification of the proposal and/or the cancellation of any contract after its award.

K. MISCELLANEOUS CONDITIONS

1. Non-binding Acceptance of Qualifications: This RFP does not commit BNYDC to award a contract for any services.
2. Costs: BNYDC is not liable for any costs incurred in the preparation of a response to this RFP. The City and BNYDC shall not be obligated to pay any fee, cost or expense for brokerage commissions or finder's fees with respect to the execution of the Contract. The Respondent agrees to pay the commission or other compensation due to any broker or finder in connection with the Contract, and to indemnify and hold harmless the City and BNYDC from any obligation, liability, cost and/or expense incurred by the City or BNYDC as a result of any claim for commission or compensation brought by any broker or finder in connection with the Contract.
3. Modifications: Respondents may be asked to make revisions, additions or deletions to their proposals as may be required by BNYDC.
4. News Releases. Recipients of this RFP shall make no news or press release pertaining to this RFP or anything contained or referenced herein without prior written approval from BNYDC. To the extent any news or press releases pertaining to this RFP are permitted, they must be made in coordination with BNYDC.
5. Investigations/Derogatory Information. The Respondent, the members of its Consultant Team, and all officers, principals, principal shareholders, partners and members thereof, if applicable, must complete a background questionnaire and shall be subject to investigation by BNYDC and the City's Department of Investigation. The selection of

- a Respondent may be rejected or revoked, or the Contract, if awarded, terminated for cause, in BNYDC 's sole discretion, in the event any materially derogatory information is revealed by such investigation or otherwise including, without limitation, that any such persons or any other persons substantially involved in the Respondent's activities has committed any of the acts or omissions specified as the grounds for debarment in the City's Procurement Policy Board Rules.
6. Applicable Law. This RFP and any Contract, Subcontract or any other agreement resulting herefrom are subject to all applicable laws, rules, regulations and executive orders, policies, procedures and ordinances of all Federal, State and City authorities, as the same may be amended from time to time, including without limitation, equal employment opportunity laws.
 7. City Not a Party. The City is not a party to this RFP, has made no representation to any prospective Respondent and shall have no liability whatsoever in connection with this RFP.
 8. Reserved Rights: This is a "Request for Proposals" and not a "Request for Bids". BNYDC shall be the sole judge of whether a proposal conforms to the requirements of this RFP and of the merits and acceptability of the individual proposals. All proposal material submitted becomes the property of BNYDC and BNYDC reserves the right at its sole discretion to:
 - a. Issue a separate RFP for insurance-related services at any time, even if such service projects may be within the scope of this RFP;
 - a. Reject any and all Proposals received in response to this RFP at any time prior to signing of the Contract;
 - b. Award a contract to other than the lowest fee Respondent;
 - c. Waive, modify or correct any irregularities in Proposals received, after notification to the Respondent;
 - d. Require supplemental statements and information from any Respondents to this RFP;
 - e. Change the structure of the proposed fee, if such is in the interest of BNYDC;
 - f. Negotiate the final scope, staff participation, and fee before entering into contract with successful Respondent;
 - g. Revise the fee (and/or scope, accordingly) as BNYDC may require subsequent to receipt of competitively priced proposals;
 - h. Extend the time for submission of all Proposals after notification to all prospective Respondents;
 - i. Terminate negotiations with a selected Respondent and select the next most responsive Respondent, or take such other action as deemed appropriate if



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- negotiations fail to result in a signed Contract within a reasonable amount of time from the commencement of negotiations;
- j. Terminate or modify the RFP process at any time and reissue the RFP;
 - k. Approve or reject any sub-consultants or sub-contractors proposed by the Respondent; and
 - l. Request a change of any sub-consultant or sub-contractor at any time in the contract process.

BNYDC appreciates your interest in this RFP and looks forward to receiving your Proposal.



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Exhibit A
MAP OF THE BROOKLYN NAVY YARD

(See attached)

BROOKLYN NAVY YARD


 141 Flushing Avenue
Brooklyn, NY 11205

MAIN GATES

-  **SANDS ST.**
24hrs, Mon. - Sun.
-  **CUMBERLAND ST.**
5am - 11pm, Mon. - Fri.
9am - 6pm, Sat. - Sun.
-  **CLINTON AVE.**
24hrs, Mon. - Sun.
-  **CLYMER ST.**
5am - 9pm, Mon. - Fri.
5am - 1pm, Sat. - Sun.

TRANSPORTATION


 **MTA BUS ROUTES**
B67 B57 B69

 **PUBLIC BIKE RIDERS**
All public bike riders looking to access NYC Ferry landing must **enter** and **exit** at the Clinton Avenue gate. - - - - -




 **BNY BIKE RACKS**

 **CITI BIKE STATIONS**

 **NYC FERRY**
Dock 72 - AST Line
Visit ferry.nyc for schedules.
Path to Ferry - - - - -

 **OPTIMUS RIDE STATIONS**
Mon. - Fri. at Cumberland and Clinton Gates. Weekends on Paulding St. behind Building 120.
Optimus Ride Route - - - - -

PUBLIC ACCESS POINTS

-   **BUILDING 92**
Employment Center
Historic Exhibitions
Yard Work Gallery
Brooklyn Roasting Company
-   **BUILDING 77**
Dining and Ferry; ADA
Accessible path to ferry landing
-   **ADMIRALS ROW**
Building 212: Wegmans
Building 303: Parking
Buildings B, C, D, E
-   **NAVAL CEMETERY MEMORIAL PARK**





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**Exhibit B
 DECLARATION OF UNDERSTANDING**

By signing in the space provided below, the undersigned certifies that the Respondent (i) has read and understands the scope and requirements of this Project, as described in the RFP and all exhibits and attachments; (ii) has the capacity to execute this Project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the standard Contract, attached hereto as Exhibit J, and (iv) will, if its Proposal is accepted, enter into the attached Contract with the Brooklyn Navy Yard Development Corporation.

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

Authorized Signature, Title Date

Respondent Firm

Business Address

City State Zip

Telephone Number Fax Number

Federal Tax Identification Number

- Corporation Partnership
 Individual Other (State)



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Exhibit C
CONFIRMATION OF PASSPORT COMPLIANCE

CONFIRMATION OF PASSPORT COMPLIANCE

The Proposer shall submit this Confirmation of PASSPort Compliance

Name of Proposer: _____ Proposer’s Address: _____ Proposer’s Telephone
Number: _____ Proposer’s Fax Number: _____ Date of Proposal Submission: _____
Project ID: _____

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

- (1) Submission of Questionnaires to MOCS: By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted PASSPort Questionnaires to the PASSPort website thru the link below: <https://www.nyc.gov/site/mocs/passport/about-passport.page>.

Date of Submission: _____

By: _____

(Signature of Partner or corporate officer)

Print Name: _____

- (2) Submission of Certification of No Change to BNYDC: By signing in the space provided below, the Proposer certifies that they have read the instructions on the Passport website.

By: _____

(Signature of Partner or corporate officer)

Print Name: _____

(RESPONDENT TO ATTACH FORM)



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Development Corporation
BrooklynNavyYard.org

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Brooklyn, NY 11205

Exhibit D

SCOPE OF SERVICES

I. DEFINITIONS

A. Definitions. All definitions set forth in the Contract between the Corporation and the Consultant to which this Scope of Services is annexed shall have the same meaning herein unless otherwise defined or unless the context otherwise requires.

B. Additional Definitions. The following terms shall have the following corresponding meanings:

“Agencies” means DEP, DOB, DOT, DPR, DSBS, FDNY, NYPD, NYSDEC, NYSDOS, OMB and any other agencies, bureaus, departments, offices, or other discrete entities of The City of New York, the State of New York or the United States that have jurisdiction over any activities carried out in respect of the Services and/or the Project.

“Allowable Additional Costs” means of out-of-pocket-expenses which may include the cost of printing, special mailings (such as overnight delivery and messenger services), Services- related long-distance telephone and facsimile charges, and any other out-of-pocket expenses, approved in advance by the Director, on a direct cost basis (with no additional provisions or overhead fee). Allowable Additional Costs shall not include travel to and from the Project site, meals, and those costs considered to be overhead such as normal mailing, local telephone and facsimile charges, in-house copying secretarial, clerical and typist time and the purchase of office or graphic supplies.

“Current Program” means BNDYC’s current Program as described in Exhibit E to this RFP.

“Extension Period” means as described in Part I, Section 4 of the Contract.

“Financing Options” means as described in Section III.G.1 of Appendix B to the Contract.

“Program” means BNYDC’s corporate insurance program.

“Quarterly Reports” means as described in Part III.A.6 of this Appendix B to the Contract.



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II. PROJECT BACKGROUND

A. BNYDC and its Insurance Program

Pursuant to its lease and contracts with the City, BNYDC indemnifies and defends the City against any third-party claims arising within the Brooklyn Navy Yard or in connection with BNYDC's management and operation of the Brooklyn Navy Yard. In accordance with its obligations to the City, BNYDC requires that tenants, licensees, and contractors performing work at the Brooklyn Navy Yard indemnify and defend BNYDC and the City against third-party claims, and requires that all such entities provide adequate insurance and name BNYDC and the City as additional insured on those policies.

BNYDC has a variety of different insurance policies covering its operations and the Brooklyn Navy Yard. A description of BNYDC's Current Program, including substantially all of the coverages is summarized below and a list of such current policies is annexed hereto as Exhibit E to this RFP:

Property, Excess Property, General Liability, Umbrella / Excess Liability, Federal Flood, Excess Flood, Workers' Compensation/Employers' Liability, Auto Liability, Auto Liability (Buses), Terrorism, Marine Hull/Protection and Indemnity, Marine Excess Liability, Cyber Liability, Liquor Liability, Fine Arts, Directors and Officers, Directors and Officers Excess, Crime, Boiler and Machinery, Professional Liability

Two buckets of insurance, in particular, are a significant focus for the Corporation, and warrant some further background here: (1) Property, Excess Property, and Flood coverage; and (2) Liability and Umbrella coverage.

1. *Property, Excess Property, and Flood:*

Property and flood insurance are important components of BNYDC's insurance program, particularly given the Brooklyn Navy Yard's unique attributes as an urban waterfront industrial park with a campus of over fifty buildings and structures, largely inherited from historic Navy operations, as well as working docks and piers.

Buildings at the Yard are largely tenanted; most are multi-tenant buildings, but several have single tenant occupancy. Industrial is the primary usage category within the Brooklyn Navy Yard, but uses also include artist and design studios, offices, woodworking, food manufacturing, and others.

Many of the buildings on BNYDC's campus are older Navy-era construction, predating when the Yard was sold by the federal government over to the City in the 1960s. Over the years, BNYDC has modernized and updated a number of buildings and continues to progress projects to



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modernize elevators and update sprinkler and fire alarm systems in several buildings. However, many buildings retain original historic attributes inherited from the Navy.

BNYDC has been fortunate not to have any recent significant losses or claims made on any of its property, excess, or flood policies.

2. *Liability and Umbrella:*

The Yard's large size, busy nature, industrial activity, and the significant numbers of individuals who visit or work at the Yard on a daily basis make liability and umbrella/ excess liability policies particularly important for BNYDC. To mitigate risk and in accordance with its obligations to the City, BNYDC requires that tenants, licensees, and contractors performing work at the Brooklyn Navy Yard indemnify and defend BNYDC and the City against third-party claims and requires that all such entities provide adequate insurance and name BNYDC and the City as additional insureds on those policies. As a result, while BNYDC does see an expected volume of trip and fall and personal injury cases, most are successfully tendered to tenants' and/or contractors' insurance carriers.

B. BNYDC's Insurance Consulting Needs

BNYDC seeks insurance consulting services to assist BNYDC in analyzing risks, determining the types of insurance policies it should procure and maintain, as well as appropriate policy limits and to procure such policies at competitive rates. Such services shall also include analyses of potential deductibles and self-insured retention limits to achieve the best overall economic value for the Corporation.

BNYDC is not seeking insurance brokerage services pursuant to this RFP. BNYDC currently pays insurance premiums directly to insurance companies or to brokers who have procured the policies. BNYDC expects to continue to directly pay all insurance premiums and make separate payments to its chosen insurance consultant in accordance with the Contract.

BNYDC is seeking an independent consultant who does not have an exclusive relationship with any particular insurance company or broker. BNYDC does recognize that the Consultant will likely need to retain insurance brokers to seek quotes from multiple carriers for the procurement for many or most of the Corporation's insurance policies. Accordingly, BNYDC is seeking a Consultant who has strong relationships with various insurance companies and brokers who specialize in the types of policies to be procured and maintained by the Corporation.



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III. SERVICES TO BE PERFORMED AND WORK PRODUCT

For each Contract Year and during each Extension Period, if applicable, the Consultant shall act as the Corporation's insurance consultant with respect to the insurance coverages outlined in this Scope of Services and Exhibit E to this RFP, and any additional coverages that the consultant may suggest or BNYDC may seek to procure. In such capacity, the Consultant shall provide the following Services and produce the following Work Product in connection with the following service elements for the workstream:

A. Risk Assessment. Consultant shall, in coordination with BNYDC staff,

1. analyze and evaluate the existing insurance Program including, at a minimum, primary and excess coverages, limits, ratings, retention levels, pricing parameters, property exposures, operations, new exposures resulting from development or divestiture, and loss experience;
2. identify deficiencies and/or gaps in coverages prior to policy renewals and during the policy year and make recommendations to remedy the same as part of the renewal proposal or as soon as discovered during the policy year;
3. update annually the Program's exposure and underwriting data (including applications with the understanding that all applications for insurance shall be signed by the Corporation) for submission to insurers (e.g. expenditures, locations, values, rents, third party vendors) as provided to the Consultant by the Corporation;
4. apply industry cost factors as provided by the Corporation to update annually the replacement value for each Property and perform appraisals as requested;
5. review, as requested by the Corporation, hold harmless, indemnification, risk and insurance provisions of existing and proposed leases, contracts and other agreements as may be requested;
6. review, as requested by the Corporation, hold harmless, indemnification, risk and insurance issues related to property management and operational real estate development and other agreements as may be requested; and
7. review insurance certificates provided by third parties for compliance with contracts from time to time, as requested. (Please note that the Corporation



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uses a third-party firm to review insurance certificates from its tenants and contract counterparties.)

B. Risk Placement. Consultant shall provide the following Services and Work Product related to Risk Placement provided, however, that the Consultant shall not contact any market without the Corporation's prior approval:

1. Work with and retain third party insurance brokers, in consultation with the Corporation, to obtain the most appropriate and cost-effective policies and to have quotations with premium, exposure, policy forms, and coverage analysis in the form of a proposal to BNYDC at least 30 days prior to the expiration of applicable current policies. Such proposals shall also include:
 - a. Summary schedule of all insurance in force;
 - b. Comments on the status of major losses incurred during the last year;
 - c. Assessment of the current conditions of the insurance market and the outlook for the next twelve months;
 - d. Analysis of the Consultant's own performance versus objectives for the past year; and
 - e. Proposed coverages and deductibles for the coming year.
2. While the Corporation uses a third-party claims administrator firm to assist in the management of claims against the Corporation, the Consultant may be asked, from time to time, to opine and strategize on the management of particular claims from time to time;
3. continue to market, through brokers, as applicable, and place all insurance coverages as requested by the Corporation, and present to the Corporation written quotations for such coverages at least one (1) month prior to the expiration date thereof;
4. add to and/or delete Properties and/or coverage from the Program, as requested by the Corporation;



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5. provide an annual review of the solvency of the Program's insurance carriers (including, as requested, specific financial data) using as minimum standards ratings set by Best's, Moody's and Standard & Poor's;
6. introduce the Corporation to the Program's insurance carriers at least 15 days prior to renewals if Consultant proposes to switch insurance carriers and coordinate a meeting to discuss post-renewal transition and other process changes;
7. introduce the Corporation to any Subcontractor (including wholesaler or other broker) performing any part of the Services and provide a breakout of Subcontractor costs.

C. Risk Management and Control. Consultant shall provide the following Services and Work Product related to Risk Management and Control:

1. provide extensive and comprehensive ongoing services in connection with the Program including, but not limited to, providing general advice regarding best practices and insurance exposures, and the addition and deletion of Properties, equipment and coverages;
2. perform and/or attend on-site inspections of the Properties to be conducted by the Consultant or Program insurance carriers, as may be recommended or required by the Consultant, said carriers or the Corporation including, at a minimum and without limitation, on-site inspections of the following:
3. prepare and/or provide reports of such site inspections that summarize recommendations for personnel safety, security, property protection and loss control for all Properties inspected;
4. manage and coordinate inspections of Properties conducted by Program insurance carriers;
5. review and submit to the Corporation comments on any inspection reports prepared by Program insurance carriers within fifteen (15) days of receipt;
6. participate in annual or bi-annual risk management review meetings with the Corporation to discuss major outstanding issues and progress toward objectives and to report to the Corporation activities performed to date with comparisons to objectives;



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7. analyze loss data to identify areas needing immediate attention; and
8. assist in the preparation of loss mitigation reports for the Corporation, as requested by the Corporation.

D. Claims. As stated above, although the Corporation maintains a contract with a third-party claims administrator to administer claims against the Corporation, the Corporation may seek advice from the Consultant from time to time on claims management issues. These issues may include: (i) assistance in the review of the current claims management program including, but not limited to procedures; reporting and record-keeping systems and requirements; and policies and procedures for adjusting claims below policy deductibles; and (ii) the provision of general claims management advice.

E. Audits. Consultant shall provide appropriate Program information, as requested by the Corporation, to assist the Corporation in satisfying internal and external audit requirements.

F. Administration. Consultant shall provide the following Services and Work Product related to Administration:

1. *Procurement.* The Consultant, through the use of brokers, as applicable, shall procure all coverages.
2. *Meetings/Presentations.* The Consultant shall, at the Corporation's request, arrange and attend any and all meetings and presentations regarding the Corporation's insurance and/or the Program, and shall provide all data and materials necessary for such meetings.
3. *Overall Project Schedule.* The Consultant shall, as requested by the Corporation, prepare an overall project schedule, in a form approved by the Corporation, with respect to any form of insurance for which the Corporation wishes to explore, plan or undertake. Activities requiring decisions or actions by the Corporation shall be clearly indicated.
4. *Policies.* Consultant shall:
 - a. endeavor to obtain all insurance policies from carriers within sixty (60) days after placement of the Program coverages;



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- b. review such policies for accuracy and follow-up immediately with carriers to correct any errors;
 - c. send originals to the Corporation, along with a copy of the Consultant's list of proposed changes to such policies within 15 business days upon receipt of policies;
 - d. deliver final endorsements of such policies to the Corporation within ninety (90) days after placement it being understood that the Corporation shall also review the policies for accuracy and completeness; and
 - e. process mid-term change requests and endorsements and provide endorsements and invoices (if applicable) for additional or return premiums within 30 days of initial request.
5. *Binders*. Consultant shall submit written binders for Program coverage within one (1) week after the Corporation requests the placement of such coverage.
6. *Certificates*. Consultant shall issue certificates of insurance, as requested by the Corporation, within two (2) business days of Request, and upon the renewals of policies.
7. *Summaries*. Consultant shall prepare working summaries of all Program insurance policies to serve as a reference for the Corporation as requested within ten (10) business days of request.
8. *Database*. Consultant shall develop and maintain a comprehensive list of the Corporation's key property and casualty underwriting, exposure, and loss data (by Property). Such data shall be used for marketing the Program to interested carriers and shall provide a basis for loss projections. The Consultant shall prepare annual reports (by Property or by project as specified by the Corporation) of losses and loss trends.
9. *Risk Management Reports*. Consultant may, from time to time, prepare special risk management related reports and analyses for the Corporation, as requested by the Corporation.



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10. *Workshops and Presentations.* Consultant shall participate in periodic risk management-related workshops or presentations to the Company, as requested by the Corporation.

11. *Ongoing Services.* Consultant shall respond to written or telephone inquiries from the Corporation within twenty-four (24) hours.

G. Financing. At this time, the Corporation does not finance the payment of its insurance premiums or any self-insured retentions. In the event the Corporation elects to seek financing for these items, the Consultant shall work with the Corporation to evaluate and if necessary, facilitate any such financing programs.

H. Ownership of Data/Confidentiality. The Consultant shall, in accordance with the terms of the Contract, maintain in strict confidence all data relating directly or indirectly to the Corporation and its affiliates including, but not limited to the Corporation's property/casualty underwriting, exposure and loss data.

Conflicts of Interest: The Consultant shall ensure in the provision of the Services, the highest standard in addressing any potential conflict of interests between any of its current clients and the Corporation through demonstrated delineation of project teams, robust privacy policies, use of firewalls and the Consultant's internal code of conduct.



Exhibit E
OVERVIEW OF CURRENT INSURANCE PROGRAM

Below please find an overview of BNYDC’s current insurance program. This chart is for the purposes of giving Respondents information on the nature and scope of BNYDC’s insurance needs. It is not intended be comprehensive and is purely summary and informational in nature. The chart is not binding on BNYDC and BNYDC may seek to change its insurance coverages in future renewals, with the advice and guidance of the successful Respondent.

TYPE OF INSURANCE	COVERAGE DESCRIPTION
<p align="center">Property</p>	<ul style="list-style-type: none"> • Primary Property Program \$25M Per Occurrence: Primary property policies covering up to a limit of \$25,000,000 per occurrence and annual aggregate on an all-risk basis, <i>including</i> flood and earthquake. The coverage includes a limit of \$20,000,000 covering dry docks and piers. Eleven carriers currently participate in this tranche of coverage, including one carrier whose layer. • Excess Property \$375M XS \$25M: Fifteen carriers participate in coverage in various layers of coverage excess of the primary \$25M property coverage, together bringing the total limit per occurrence up to \$400M of liability. These layers are on an all-risk basis and exclude flood, docks, and piers. • Boiler & Machinery: \$150M limit per breakdown • Terrorism (Property Coverage): \$500M limit
<p align="center">Marine</p>	<ul style="list-style-type: none"> • Marine - Hull, P&I, and Excess Liability: Cumulative coverage of \$10M
<p align="center">Federal Flood</p>	<ul style="list-style-type: none"> • Federal Flood: BNYDC currently has federal flood policies on various buildings up to a limit of \$500k each.
<p align="center">Liability</p>	<ul style="list-style-type: none"> • General Liability: \$4M aggregate • Umbrella: We have five layers of umbrella coverage, with one carrier participating in each layer, for cumulative liability coverage of up to \$100M.



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TYPE OF INSURANCE	COVERAGE DESCRIPTION
<p style="text-align: center;">Auto</p>	<ul style="list-style-type: none"> • Automobile: BNYDC has automobile policies covering (i) its fleet of approximately 50 operational vehicles, which are used for day-to-day work around the Yard; and (ii) two sprinter van shuttles that are driven by BNYDC staff on occasional basis, primarily to transport BNYDC staff and guests in the course of work, tours, and visits.
<p style="text-align: center;">Employment and D&O</p>	<ul style="list-style-type: none"> • Directors & Officers Liability, EPLI, and Excess: We have \$5M of D&O and EPLI liability coverage, plus \$5M excess on follow-form basis. • Disability Benefits Liability • Workers' Compensation: Statutory limits
<p style="text-align: center;">Misc.</p>	<ul style="list-style-type: none"> • Fine Arts: Fine arts coverage for scheduled items plus blanket coverage for unscheduled items. Coverage is intended for: (i) certain historic artifacts that are BNYDC or City property, or on loan; and (ii) certain art, items, and exhibits in BNYDC possession and/or on display in the public exhibit housed in Building 92 at the Yard as well as rotating art exhibitions at the Yard. • Cyber Liability: \$2M limit • Professional Liability: \$1M limit, primarily covering services by BNYDC's in-house architect(s) • Crime (Pension Trust): \$500K limit • Liquor Liability: Liquor liability covering serving wine and beer at small BNYDC-hosted functions in Building 92, primarily art exhibitions.



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Exhibit F
DOING BUSINESS DATA FORM

(See attached)

To be completed by the City agency prior to distribution Agency _____ Transaction ID _____

Check One

Transaction Type (check one)

- Proposal Award Concession Economic Development Agreement Franchise Grant Pension Investment Contract Contract

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

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York, as will the organizations that own 10% or more of the entity. No other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's PASSPort registration or VENDEX requirements.**

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

If you are completing this form by hand, please print clearly.

Entity Information

Entity EIN/TIN _____ Entity Name _____

Filing Status

(Select One)

NEW: Data Forms submitted now must include the listing of **organizations**, as well as individuals, with 10% or more ownership of the entity. Until such certification of ownership is submitted through a change, new or update form, a no change form will not be accepted.

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

Entity is a Non-Profit Yes No

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

Address _____

City _____ State _____ Zip _____

Phone _____ E-mail _____

Provide your e-mail address in order to receive notices regarding this form by e-mail.

Principal Officers

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

Chief Executive Officer (CEO) or equivalent officer

This position does not exist

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

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CEO _____ on date _____

Chief Financial Officer (CFO) or equivalent officer

This position does not exist

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

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former CFO _____ on date _____

Chief Operating Officer (COO) or equivalent officer

This position does not exist

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

First Name _____ MI _____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

This person replaced former COO _____ on date _____

Principal Owners

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

There are no owners listed because (select one):

- The entity is not-for-profit
- The entity is an individual
- No individual or organization owns 10% or more of the entity

Other (explain) _____

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

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Organization Owners (that own or control 10% or more of the entity)

Organization Name _____

Organization Name _____

Organization Name _____

Remove the following previously-reported Principal Owners

Name _____ Removal Date _____

Name _____ Removal Date _____

Name _____ Removal Date _____

Senior Managers

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

Senior Managers

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

First Name _____ MI ____ Last _____ Birth Date (mm/dd/yy) _____

Office Title _____ Employer (if not employed by entity) _____

Home Address _____

Remove the following previously-reported Senior Managers

Name _____ removal date _____

Name _____ removal date _____

Certification

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

Name _____ Title _____

Entity Name _____ Work Phone # _____

Signature _____ Date _____



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Exhibit G
MWBE QUESTIONNAIRE

(See attached)



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Dear Vendor:

The Brooklyn Navy Yard Development Corporation is compiling statistical data on companies that provide construction, professional services, standard services, and goods to our company so that we can comply with the New York City Local Law (LL 129). Please complete the attached information sheet and return it alongside your vendor information forms.

If you are a minority or woman-owned business enterprise (M/WBE) but are not yet certified by the City of New York we strongly urge you to do so. The city has an aggressive program to help certified M/WBEs and it is in your best interest to get certified. For more information on getting certified, we suggest that you call the New York City Department of Small Business Services' Certification Hotline at (212) 513-6311. Addition information can also be obtained through the City's website at: www.nyc.gov/getcertified.

We sincerely appreciate your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brian Linett', with a long horizontal flourish extending to the right.

Brian Linett

Sr. Vice President & Controller



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Name:

Company Title:

Company Name:

Company Address:

Federal Tax ID / SSN:

Email:

Telephone:

Business type:

- Individual/Sole Proprietor
- Corporation

- Partnership
- Other

Business category:

- Construction
- Professional Services
- Standard Services
- Other

- Construction Subcontract
- Professional Services Subcontract
- Goods

Business Demographics

A minority- and women- owned business enterprise (M/WBE) is a business owned (51% or greater) by an owner that identifies as Asian-Indian, Asian-Pacific, Black, Hispanic, Native American, and/or female.

Majority owner M/WBE? Yes No

Majority owner female? Yes No

Designated MBE Group (select one - if N/A, please leave blank):

- Asian - Indian
- Asian - Pacific
- Black
- Hispanic
- Native American

City or state certification (select all that apply):

- Minority and Women-owned Business Enterprise (M/WBE)
- Locally Based Enterprise (LBE)
- Emerging Business Enterprise (EBE)
- Service-Disabled Veteran-Owned Small Business (SDVOB)

Certification Number:



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Exhibit H
FEE AND COST SCHEDULE

Complete and submit a Fee and Cost Schedule, substantially in the form of the “Sample Fee and Cost Schedule” on the following page.

The Fee and Cost Schedule should cover all Services and Tasks described in the RFP and the Contract Draft and shall provide a breakdown of staff and Subcontractor costs and Allowable Additional Costs per Task. BNYDC and Consultant may elect to have the “Maximum Annual Amount” listed in the Fee and Cost Schedule billed and paid in equal monthly or quarterly installments. In all instances, the Respondent should provide information on hourly billing rates and estimated time to be spent on the Services as back-up for the calculations in the Fee and Cost Schedule.

(Sample Fee and Cost Schedule on Following Page)



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SAMPLE FEE AND COST SCHEDULE

RESPONDENT INFORMATION

This Fee and Cost Schedule is submitted by:

Authorized Signature, Name, Title _____ Date _____

Firm Name (the "Respondent") _____ Federal Tax Identification Number _____

Business Address _____

Telephone Number _____ Email Address _____

FEE AND PAYMENT SCHEDULE

CONTRACT PERIOD	MAXIMUM ANNUAL AMOUNT
Year One	\$
Year Two	\$
Year Three	\$
Extension Year One*	\$
Extension Year Two*	\$
TOTAL MAXIMUM FEE OVER CONTRACT TERM AND EXTENSION, IF APPLICABLE	\$

* Extension Period fees would only apply if the Corporation exercises its option(s) to renew the Contract.

PROPOSED BILLING STRUCTURE

Please describe the proposed billing structure, including whether the Respondent proposes to charge a flat fee on recurring basis, bill on an hourly rate, or an alternative or hybrid billing structure:



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

141 Flushing Ave
Building 77, Unit 801
Brooklyn, NY 11205

FEE AND COST SCHEDULE SPREADSHEETS

The Respondent shall provide a backup spreadsheet setting forth its calculations supporting its proposed Fee and Cost Schedule including the above-listed Maximum Annual Amounts, including the following information:

- **Staffing Plan:** The spreadsheet should set forth the names (if available), positions, and hourly rates and, if applicable, multipliers for the staff breaking out fee(s) paid out to any Subcontractors (including any wholesalers or other insurance brokers) that Respondent proposes to use to perform the Services.
- **Additional Cost Schedule:** As part of the Fee and Cost Schedule, the Respondent shall also itemize its anticipated additional costs directly related to the Services to be performed under the contract.

Please see Exhibit I, below, for a sample of a Staffing Plan and Additional Cost Schedule to be utilized as part of this support for the Fee and Cost Schedule. These schedules are for evaluation purposes only and shall not be used to determine payments or to define the Scope of Work. If selected, prior to Contract execution, the Consultant will provide a detailed Fee and Cost Schedule which may be utilized for payment purposes.



Brooklyn Navy Yard
 Development Corporation
 BrooklynNavyYard.org

141 Flushing Ave
 Building 77, Unit 801
 Brooklyn, NY 11205

Exhibit I

SAMPLE STAFFING PLAN & ADDITIONAL COST SCHEDULES

Please see Exhibit H and Section E(4)(b) of this RFP for instructions on the information required to be submitted as part of the Staffing Plan and Additional Cost Schedule, and please see below for a sample template. Respondents can add additional rows as needed. A resume for each person listed below must also be submitted as part of the Proposal. The Maximum Hourly Billing Rate shall be inclusive of all multipliers for insurance, overhead, profit, etc.

STAFFING PLAN

Firm Name	Personnel Name and/or Title	Estimated Hours	Maximum Hourly Billing Rate

ADDITIONAL COSTS AND FEES

Additional Item	Description and Rationale for Cost	Anticipated Cost



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

141 Flushing Ave
Building 77, Unit 801
Brooklyn, NY 11205

Exhibit J
DRAFT FORM OF CONTRACT

(See attached)

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
(BNYDC) CORPORATE INSURANCE PROGRAM
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF INSURANCE CONSULTANT
SERVICES**

DRAFT
CONSULTANT CONTRACT

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
(BNYDC) CORPORATE INSURANCE PROGRAM
PROFESSIONAL SERVICES CONSULTANT CONTRACT**

PART I

SPECIFIC TERMS AND CONDITIONS

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

1. The Contract

- 1.1 Contract:** These Specific Terms and Conditions (Part I), the General Terms and Conditions (Part II) and the Appendices (Part III)
- 1.2 BNYDC Contract No.**
- 1.3 Contract Date:**
- 1.4 Commencement Date:**
- 1.5 Term:** Three Years, subject to any renewal options per Sections 4.2 and 4.3 of this Contract
- 1.6 Maximum Contract Price:**
- 1.7 Project:**
- 1.8 Project Site: Various properties identified in Part II, Appendix B**
- 1.9 Allowable Additional Costs:** The Allowable Additional Costs are defined in Appendix B (Scope of Services) and the amount set forth in Appendix C (Payments).
- 1.10 Retainage: NONE**
- 1.11 Retainage Payment Date: NONE**
- 1.12 M/WBE Participation Goal: Not Applicable**

2. **Parties**

2.1 **The Corporation:** Brooklyn Navy Yard Development Corporation, a not-for-profit corporation, organized under the laws of the State of New York.

2.2 **Director:**

2.3 **The Consultant:** [_____], a **[INSERT STATE CONSULTANT WAS ORGANIZED AND TYPE OF BUSINESS ENTITY, e.g. a New York corporation (or partnership, LLP or LLC)]**, having an office at:

**[ADDRESS: _____

_____]**

[FEDERAL TAX ID# _____]

2.4 **Principal:** **[INSERT NAME OF CONSULTANT'S MOST SENIOR OFFICER RESPONSIBLE FOR THE PERFORMANCE OF THE SERVICES]**

2.5 **Person in Charge:** **[INSERT NAME OF THE MEMBER OF THE CONSULTANT'S PROFESSIONAL STAFF WHO WILL HAVE PRIMARY RESPONSIBILITY TO PERFORM AND/OR SUPERVISE AND COORDINATE PERFORMANCE OF THE SERVICES]**

3. **Notice Parties and Addresses**

3.1 **Notices to the Corporation:**

With a copy to:

3.2 **Notices to the Consultant:**

**[NAME: _____]
[ADDRESS: _____]
Attn: [NAME: _____]**

4. **Special Provisions** The provisions set forth below are hereby added to and made part of, or deleted from this Contract, as indicated. In the event any conflict exists between any of the General Terms and Conditions (Part II) of this Contract and these special provisions, these special provisions shall govern.

4.1 **Other Interested Parties: None**

4.2 Subject to the provisions of Section 1.2 of the General Terms and Conditions (Part II)

of this Contract, the Corporation shall have an option (“First Option”) to renew this Contract and extend the initial three (3) year Term from the date upon which it would otherwise expire for a period of up to one (1) year (the “First Extension Period”), which option may be exercised with either two six-month extensions not to exceed one year, or one one-year extension, in the manner hereinafter set forth. Provided that this Contract shall then be in full force and effect and there shall not then exist any uncured default hereunder, the Corporation, at its sole discretion, may exercise the First Option to extend the initial Term for the First Extension Period, subject as aforesaid, by giving written notice to the Consultant of its election to so extend at least thirty (30) days prior to the expiration of the initial Term. In the event that the First Option is exercised, the Term shall automatically be extended for the First Extension Period without the necessity for execution of any extension or renewal contract. The First Extension Period shall be upon all of the same terms, covenants and conditions as shall be in effect hereunder immediately prior to the commencement of the First Extension Period, except that (i) the compensation that the Corporation shall pay to the Consultant for the Services during the First Extension Period shall be an amount not to exceed the amount as set forth in Exhibit 1 to Appendix C of this Contract; and (ii) there shall be one further option to extend or renew the Term following the First Extension Period.

4.3 Subject to the provisions of Section 1.2 of the General Terms and Conditions (Part II) of this Contract, the Corporation shall have an option (the “Second Option”) to renew this Contract and extend the Term beyond the First Extension Period for a period of up to one (1) year (the “Second Extension Period”), which option may be exercised with either two six-month extensions not to exceed one year, or one one-year extension, in the manner hereinafter set forth. Provided that this Contract shall be in full force and effect and there shall not then exist any uncured default hereunder, and provided further that the Corporation shall have exercised the First Option as provided hereunder, the Corporation, at its sole discretion, may exercise the Second Option to extend the Term for the Second Extension Period, subject as aforesaid, by giving written notice to the Consultant of its election to so extend not later than thirty (30) days prior to the expiration of the First Extension Period. In the event that the Second Option is exercised the Term shall automatically be extended for the Second Extension Period without the necessity for execution of any extension or renewal contract. The Second Extension Period shall be upon all of the same terms, covenants and conditions as shall be in effect hereunder immediately prior to the commencement of the Second Extension Period, except that (i) the compensation that the Corporation shall pay to the Consultant for the Services during the Second Extension Period shall be an amount not to exceed the amount set forth in Exhibit 1 to Appendix C of this Contract; and (ii) there shall be no further option to extend or renew the Term.

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

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be duly executed as

of the Contract Date hereinabove written.

**BROOKLYN NAVY YARD
DEVELOPMENT CORPORATION**

[INSERT CONSULTANT NAME]

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
(BNYDC) CORPORATE INSURANCE PROGRAM
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF INSURANCE CONSULTANT
SERVICES**

**PART II
GENERAL TERMS AND CONDITIONS**

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**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
(BNYDC) CORPORATE INSURANCE PROGRAM
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF INSURANCE CONSULTANT
SERVICES**

**PART II
GENERAL TERMS AND CONDITIONS**

The Corporation and the Consultant agree as follows:

**ARTICLE 1
PERFORMANCE OF SERVICES**

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

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

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

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

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

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

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

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

1.4 Authority of Director/Performance of Services.

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

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

1.5 Changes to the Services.

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

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

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

from any future payments by the Corporation to the Consultant, at the exclusive option of the Corporation.

1.6 Equipment.

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

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

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

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

1.7 Services Subject to City Contract, Indemnification and Third-Party Beneficiary. This Contract is a subcontract under the City Contract and reflects the requirements of the City Contract that are applicable to the Services. The Consultant agrees to defend, indemnify and hold harmless the Corporation and the City from any claim, liability or judgment to which the Corporation or the City may be subject because of any such action or failure to act. The City shall be a third-party beneficiary of this Contract and shall have a direct cause of action against the Consultant in the event that any claim be made or any cause of action be brought against the Corporation or City or if the Consultant breaches this Contract.

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

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

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

ARTICLE 2
COMPENSATION

2.1 Payments.

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

2.1.2 Requisitions shall be in a form reasonably acceptable to the Corporation and shall be supported by any appropriate or necessary documentation or other evidence relating to the amounts set forth in the Requisition, as the Corporation may reasonably require including, but not limited to invoices, receipts and vouchers from Subcontractors and suppliers, information related to M/WBEs required under Section 9.5, to the extent applicable, and, where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

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

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

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

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

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

2.2 Miscellaneous Payment Provisions.

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

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

(ii) a meritorious claim exists or will exist against the Corporation, the Consultant or the City arising out of the act, omission or negligence of the Consultant or the Consultant's breach of any provision of this Contract, then the Corporation may withhold payment of any amount otherwise due and payable to the Consultant hereunder including a penalty rate of \$250 per additional day past the timeframe outlined in the Scope of Services until the Services have been completed. Any amount so withheld may be retained by the Corporation for such period as it may deem advisable to protect the Corporation and the City against any loss and may, after Notice to the Consultant, be applied in satisfaction of any claim herein described.

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

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

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

ARTICLE 3 **SUSPENSION OR TERMINATION**

3.1 Delay, Postponement or Suspension of Work.

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

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

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

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

3.3 Defaults and Termination for Cause.

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

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

(i) The Consultant fails to assign workers, order materials or enter into subcontracts in a manner sufficient to permit completion of the Services, or any Portion thereof, within the time limits of the Progress Schedule or in accordance with any Progress Schedule approved by the Corporation;

(ii) The Consultant fails to complete the Services, provides Services which are materially different than those represented in the RFP, or materially provides wrongful guidance or insurance coverages which do not address the Corporation's stated exposures, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by the Corporation;

(iii) The Consultant materially violates any term, covenant or provision of this Contract;

(iv) The Consultant materially fails to comply with any Applicable Requirements or any Applicable Agreements;

(v) Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;

(vi) The Consultant becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;

(vii) The Consultant voluntarily, or by operation of law, assigns, transfers, conveys or otherwise disposes of its interest in this Contract or its right to receive funds hereunder without the prior written consent of the Corporation;

(viii) The Consultant fails to comply with the M/WBE Requirements in Article 9, to the extent applicable;

or

(ix) The Consultant or any of its officers, directors, partners, members, five (5%) percent shareholders, principals or other persons substantially involved in its activities, commits

any of the acts or omissions specified as the grounds for debarment in the City's *Procurement Policy Board Rules*.

3.4 Effects of Termination for Convenience or for Cause.

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

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

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

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

3.5 Payment Upon Termination.

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

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

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

completion of the Project, and (ii) payments made to the Consultant prior to the termination of the Contract shall hereafter be referred to as the “Contract Completion Costs”.

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

(ii) If the Contract Completion Costs are less than the Maximum Contract Price, provided that the Consultant has provided all information and documentation required by this Section, the Corporation will pay to the Consultant, an amount equal to the lesser of (a) the difference between the Maximum Contract Price and the Contract Completion Costs, or (b) such amount, when added to sums previously paid to Consultant, equitably compensates Consultant for Services satisfactorily performed up to the date of termination. Such payment will be made as further described in Section 3.5.4 below.

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

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

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

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

ARTICLE 4

PERSONNEL AND SUBCONTRACTORS

4.1 Personnel.

4.1.1 The Consultant shall employ at its own expense all personnel and retain all Subcontractors as may be required to perform the Services, and shall be solely responsible for their work, compensation, direction and conduct during the performance of this Contract. The personnel of the Consultant and any Subcontractor shall cooperate fully with the personnel of the

Corporation including, without limitation, the Director, and, in the event any personnel of the Consultant or any Subcontractor fails to cooperate, the Consultant shall relieve them of their duties of performance under this Contract.

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

4.2 Subcontractors.

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

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

4.2.3 The Consultant is solely responsible for the payments to the Subcontractors, it being understood that payments of insurance premiums are not considered Subcontractor payments and such premiums shall be paid directly by the Corporation to insurance brokers and/or insurance carriers, as applicable. Upon receipt of evidence of Consultant default hereunder with respect to its obligations to make payments to its Subcontractors, the Corporation reserves the right, after three (3) calendar days' prior Notice, to retain any money due the Consultant and pay directly for labor, materials, equipment, Services and all other obligations of the Consultant and to deduct the amount of any such direct payments from any payments or amounts then due or thereafter to become due to the Consultant. The Consultant may negotiate a fee with any third party wholesalers and/or other brokers to provide the Services, but in no event shall any BNYDC insurance premiums be paid to third party wholesalers and/or other brokers outside of the Maximum Contract Price without prior approval by BNYDC.

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

(i) there is no privity of contract between the Subcontractor and the Corporation or the City;

(ii) neither the Corporation nor the City will incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant;

(iii) the Subcontractor shall indemnify, defend and hold harmless the Corporation and the City, their agents, employees, members, directors, officials and officers against any and all claims, judgments or liabilities to which they may be subject (including, without limitation, any and all claims for injuries to persons (including death) and damage to property) because of any negligence or any fault or default of the Subcontractor, its agents, employees or subcontractors or the breach of the Subcontractor's obligations under the subcontract;

(iv) the Subcontractor's Requisitions shall conform to the same requirements and include the representations, warranties and agreements set forth in Sections 2.1.2 and 2.1.3;

(v) the "Events of Default" set forth in Section 3.3.2 as grounds for termination for cause shall be "Events of Default" and grounds for termination of the Subcontractor for cause;

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

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

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

4.2.5 The Consultant shall provide the Corporation with a list of all Subcontractors employed for the performance of the Services. For any Subcontractors that furnish services in the amount of \$100,000 or more, in aggregate, the Consultant shall cause each such Subcontractor to complete a PASSport profile and submit the profile to Mayor's Office of Contracts in a timely fashion so that the MOC may perform its contract specific responsibility determination and communicate its finding to BNYDC no later than the commencement of the Services performed by such Subcontractor pursuant to its subcontract.

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

ARTICLE 5

DOCUMENTS AND MATERIALS

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

- (i) approved in writing by the Director before any Work Product or publication as to the work of the Consultant shall be considered accepted and before any distribution;
- (ii) revised by the Consultant in accordance with the directions of the Director prior to approval; and
- (iii) prepared so as not to violate any provisions of law including, without limitation, the City Charter and the Administrative Code of the City.

5.2 Work Product.

5.2.1 All Work Product is the exclusive property of the Corporation. The Corporation may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as the Corporation may deem advisable, in whole, in part or in modified form, in all formats now known or hereafter to become known, without further employment of or additional compensation to the Consultant.

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

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

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

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

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

5.2.6 The Consultant represents and warrants that to the extent that the Work Product incorporates non-original material, the Consultant shall obtain and provide the Corporation with

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

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

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

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

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

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

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

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

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

5.3 Confidential Information.

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

- (i) use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- (ii) not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- (iii) to the extent Confidential Information must be shared with third parties to obtain insurance proposals or bind insurance, to not disclose such Confidential Information until Consultant has received express written consent from the Corporation;
- (iv) execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and
- (v) not disclose the Confidential Information for three (3) years following Final Completion.

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

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

ARTICLE 6 **INDEMNIFICATION, CLAIMS AND INSURANCE**

6.1 Indemnification of the Corporation and the City.

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

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

employees, authorized agents, servants, independent contractors and subcontractors retained by the Consultant.

6.2 Claims or Actions Against the Corporation.

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

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

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

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

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

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

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

6.3 Insurance.

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

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

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

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

- (i) be in form and substance satisfactory to the Corporation;
- (ii) be in the minimum face policy amounts set forth in Appendix E;
- (iii) list all individuals and entities identified in Appendix E as Additional Insureds except in the case of any workers' compensation, automobile liability and professional liability policies required to be maintained hereunder;
- (iv) include a waiver of the right of subrogation with respect to all Additional Insureds named therein as well as the required Workers' Compensation coverage; and
- (v) contain the provisions set forth in Appendix E.

6.3.4 Coverage for the individuals and entities identified in Appendix E as Additional Insureds shall be written into those policies set forth in Section 6.3.3 above as an endorsement at least as broad as the most recent edition of ISO Form CG 20 26 or its equivalent.

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

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

6.3.7 Prior to the commencement of the Services the Consultant shall forward to the Corporation at least three (3) original certificates of insurance and applicable additional insured endorsements for each policy required for compliance with this Contract, for itself and its Subcontractors substantially as set forth in Appendix E. The Consultant shall also provide an original certificate of insurance to each of the Additional Insureds with a copy of the endorsements providing coverage to the Additional Insureds.

6.3.8 The Consultant shall provide the Corporation and the Additional Insureds written confirmation of the renewal of any policy required hereunder no less than five (5) days prior to the expiration of any such policy.

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

- (i) Workers' Compensation, Disability Benefits, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its

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

(ii) Commercial General Liability Insurance. The Consultant shall purchase and maintain commercial general liability insurance to protect the Corporation, the City and the Additional Insureds, the Consultant and its Subcontractors against any and all claims for property damage, personal injury and death arising out of the Services performed by the Consultant and its Subcontractors, and any work incidental thereto. The commercial general liability insurance policy must also include products and completed operations coverage. The certificate of insurance must indicate that such insurance is on a "per occurrence" and an aggregate basis. The commercial general liability policy shall be in a form at least as broad in coverage as the most current ISO Form CG 00 01 or its equivalent. The additional insured protection must be as broad as coverage that would be afforded through use of ISO Forms CG 20 26. The liability policy(ies) certificate of insurance must indicate cross-liability coverage providing severability of interests so that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, coverage will respond as if separate policies were in force for each insured. If at any time the commercial general liability policy should be canceled, terminated, or modified so that the insurance is not in effect as above required, then the Consultant shall suspend performance of the Services if the Corporation shall so direct. If the Contract is so suspended, no extension of time shall be due on account thereof. If the Contract is not suspended, whether or not because of omission of the Corporation to order suspension, then the Corporation may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Consultant to the Corporation.

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

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

(v) Professional Liability Insurance The Consultant shall purchase and maintain Professional Liability insurance covering the indemnification obligations and Services to be provided under this Contract. The policy shall cover the liability assumed by the Service Provider under this Contract arising out of the negligent performance of professional services or caused by an error, omission, or negligent act (including any resulting bodily injury, property damage, and emotional distress) of the Service Provider or anyone employed (including independent contractors) by the Service Provider, including coverage for failure to render services or to perform the function intended. Such policy shall provide coverage for fees, expenses, and defense costs.

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

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

6.3.11 The policies to be maintained by the Consultant hereunder that are subject to the Additional Insured requirements set forth in Section 6.3.3 (iii) above shall constitute the primary coverage for claims arising out of this Contract, and shall state that insurance, if any, carried by the Corporation, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Consultant's insurer. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall give the insurer, the Corporation, the City and the Additional Insureds due and timely Notice of all claims, accidents and losses promptly upon its acquiring knowledge of the same.

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

6.3.13 Claims-made coverage will be accepted for the Professional Liability policy subject to a retroactive date prior to the effective date of the Contract. All such policies shall have an extended reporting period or automatic coverage of not less than three years or the statute of repose, whichever is longer. The Service Provider shall purchase extended reporting period coverage for three (3) years effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date for full prior acts.

6.3.14 The Commercial General Liability and Umbrella Excess Liability Coverage policies must be endorsed to show that these primary and/or excess policies are to be considered primary and non-contributory. In addition, the Commercial General Liability and Umbrella/Excess Liability Coverage policies must provide that (i) the Additional Insured protection afforded under the Consultant's policies shall be primary and not on an excess or contributing basis with any policies which may be available to the Corporation, and (ii) that the Consultant's policies, primary and excess, must be exhausted before implicating any Corporation policy available.

6.3.15 In order to ensure vertical erosion of liability limits provided by the Consultant under this Contract, the Consultant agrees to permit the Corporation's staff and/or the Corporation's insurance consultants to review the Consultant's liability policy language for all liability policies and to endorse those policies to clarify the hierarchy of policies in the event of a claim.

6.3.16 The limits of coverage for all types of insurance required under Exhibit E shall be the greater of (A) the minimum limits set forth in Exhibit E or (B) the limits provided to the Consultant under all primary, excess and umbrella policies covering operations under this Contract.

6.3.17 There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article 6 unless approved in writing by the Corporation. Under no circumstances shall Corporation be responsible for the payment of any deductible or self-insured retention (or any other aspect of a self-insurance program). Further, Consultant shall ensure that any such self-insurance program provides Additional Insureds with all rights that would be provided by traditional insurance under this Article 6, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

6.3.18 All required policies shall include a waiver of the right of subrogation with respect to all additional insureds named therein as well as the required Workers' Compensation coverage.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants that:

7.1 The Consultant is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and has all requisite power and authority to authorize, execute, deliver and perform this Contract in accordance with its terms. The Consultant is authorized to do business in the City of New York.

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

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

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

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

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

Consultant represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

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

ARTICLE 8

APPLICABLE LAWS, RULES AND REGULATIONS

8.1 New York Law Governs; New York Courts. The Contract shall be governed by and construed in accordance with the laws of the State of New York. Any and all claims asserted by or against the Corporation arising under this Contract or related hereto shall be heard and determined either in the Federal Courts, located in the City or in the New York State Courts located in the City and County of Kings. To effect this agreement and intent, the Consultant agrees as follows:

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

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

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

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

8.2 Modification Required by Law. The parties agree that each and every provision of federal or state or local law, rule, regulation or order, required to be inserted in this Contract, is deemed by this reference to be so inserted in its correct form, and upon the application of either party, this Contract shall be amended by the express insertion of any such provision not so

inserted or so inserted incorrectly so as to comply strictly with the law, without prejudice to the rights of either party.

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

8.4 Equal Employment Opportunity/Employment Reports.

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

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

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

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

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

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

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

8.7 Sales and Use Tax.

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

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

8.8 Whistleblowers.

8.8.1 In accordance with Section 12-113 of the New York City Administrative Code (the "Administrative Code"),

8.8.1.1 The Consultant 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 of the Consultant or any of its Subcontractors to (i) the Corporation, (ii) the City's Department of Investigation, (iii) a member of the New York City Council, the City's Public Advocate or the Comptroller, or (iv) the City Chief Procurement Officer, DSBS Chief Contracting Officer ("DSBS ACCO") or DSBS Commissioner.

8.8.1.2 If any of the Consultant's officers or employees believes that s/he or has been the subject of an adverse personnel action in violation of paragraph 8.8.1.1 above, s/he shall be entitled to bring a cause of action against the Consultant 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. An officer or employee described in this paragraph may bring an action in any court of competent jurisdiction for such relief. An officer or employee who brings a cause of action pursuant to this paragraph shall notify the DSBS ACCO or DSBS Commissioner of such action; provided, however, that failure to provide such notice shall not be a jurisdictional defect, and shall not be a defense to an action brought pursuant to this paragraph. This paragraph shall not be deemed to create a right of action against the City, any public agency or other public entity, or the Corporation, nor shall any such public agency, entity or corporation be made a party to an action brought pursuant to this subdivision.

8.8.2 In accordance with Section 6-132 of the Administrative Code, the Consultant shall post a notice in the form annexed hereto at Exhibit L.

8.8.3 For purposes of this Section, “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.

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

8.10 Iran Divestment Act. The Contractor shall comply with Section 165-a of the New York State Finance Law.

8.11 Paid Sick Leave Law. The Consultant shall comply with Title 20, Chapter 8 of the New York City Administrative Code related to paid sick leave for Consultant’s employees.

8.12 Doing Business Data Form Requirements.

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

8.12.2 The Consultant shall complete and submit a Doing Business Data Form which can be found in Appendix H to this Contract.

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

ARTICLE 9

INTENTIONALLY OMITTED

ARTICLE 10
MISCELLANEOUS

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

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

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

10.4 Maintenance of Records. In order to facilitate any audit provided herein, the Consultant agrees to maintain accurate, readily auditable records and accounts with supporting documentation in accordance with generally accepted accounting principles of the Services performed by it, its employees, and its Subcontractors under this Contract and of all financial accounts and transactions maintained or undertaken in connection with this Contract, including, but not limited to, time cards and records reflecting the nature of the work performed and time consumed, bank statements, cancelled checks, bills and receipts, Requisitions, and deposit slips, and to make such records available for inspection and audit in the City by the Corporation, the City, the Inspectors and any other individual or entity authorized under any Applicable Statute or Applicable Agreement upon reasonable Notice. Said records shall be maintained for a period of six (6) years after termination of this Contract.

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

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

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

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

10.9 Notices.

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

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

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

10.11 Refusal to Testify.

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

10.11.2 If:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
(BNYDC) CORPORATE INSURANCE PROGRAM
PROFESSIONAL SERVICES CONSULTANT CONTRACT
FOR THE PROVISION OF INSURANCE CONSULTANT
SERVICES**

**PART III
APPENDICES**

APPENDIX A	DEFINITIONS
APPENDIX B	SCOPE OF SERVICES
APPENDIX C	PAYMENTS
APPENDIX D	FORM OF CERTIFIED STATEMENT REGARDING USE OF NON-ORIGINAL MATERIALS
APPENDIX E	INSURANCE REQUIREMENTS
APPENDIX F	EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION COMPLIANCE FOR NON-CONSTRUCTION CONTRACTS ADDENDUM
APPENDIX G	E.O. 50 EMPLOYMENT REPORT FORM
APPENDIX H	DOING BUSINESS DATA FORM
APPENDIX I	WHISTLEBLOWER POSTER

APPENDIX A

DEFINITIONS

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

Additional Insured	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific “Applicable Agreements” identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Requirements	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific “Applicable Requirements” identified in Part I
BNYDC	The Corporation
Borough	Brooklyn
City	The City of New York
City Contract	The Amended and Restated Contract between the City and the Corporation, dated as of July 1, 2011, as amended, and as may be further amended, restated and/or revised from time to time
City Comptroller	Comptroller of the City or his or her designee
Commencement Date	The date upon which the Consultant shall commence the Services as stated in Part I, Section 1.4
Comptroller General	The United States Comptroller General

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

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

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

Joint Venture	An association, of limited scope and duration, between two or more persons who have entered into an agreement to perform and/or provide services required by a contract, in which each such person contributes property, capital, effort, skill and/or knowledge, and in which each such person is entitled to share in the profits of the venture in reasonable proportion to the economic value of its contribution.
Landmarks Preservation Commission (LPC)	The City of New York Landmarks Preservation Commission
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Requirements
Local Law 34 (LL 34)	Local Law No. 34 of 2007, as it may be amended or superseded
MacBride Principles	Those principles relating to nondiscrimination in employment and freedom of workplace opportunities that requires employers doing business in Northern Ireland to comply with specific terms set forth in Section 6-115.1 of the City's Administrative Code
Maximum Contract Price	The maximum amount that may be paid for the Services under the Contract, as stated in Part I, Section 1.6
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MBEs	Minority-owned Business Enterprises
M/WBE Compliance Reports	As described in Part II, Section 9.5
M/WBEs	MBEs and WBEs, collectively
M/WBE Subcontractors Participation Plan	As described in Part II, Section 9.5
MOU	Memorandum of Understanding

New York State Courts	Courts of the State of New York in the City and County of New York
Notice	Any written notice, demand, request, instruction, advice, directive or other communication in connection with this Contract to be delivered to a party designated in Part I, Section 3, for the receipt of notice in the manner set forth in Part II, Section 10.9.1
Notice to Proceed	Written Notice from the Corporation to the Consultant to proceed with the Services or any portion thereof
Notify	To give a Notice pursuant to Part II, Section 10.9.1
NYCTA	New York City Transit Authority
NYPD	New York City Police Department
NYSDEC	New York State Department of Environmental Conservation
NYSDOH	New York State Department of Health
NYSDOS	New York State Department of State
NYSDOT	New York State Department of Transportation
OMB	New York City Office of Management and Budget
OPRHP	New York State Office of Parks, Recreation and Historic Preservation
Participation Goal	The Corporation's goal for M/WBE participation related to the Contract, as defined in Part II, Section 9.3.
Payment Schedule	Schedule listing Maximum Payment for each Portion of the Services, appended to Appendix C when payment for Services or a Portion of the Services is on a Tasks completed basis
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete

Percentage of Completion	An amount equal to the percentage of completion of each Portion of the Services
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C
Principal	The Consultant's most senior officer of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule
Progress Schedule	Any schedule issued or approved by the Corporation for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by the Corporation to serve as a liaison between the Corporation and the Consultant
Project Site	The location of the Project as identified in Part I, Section 1.8 and described in detail in Appendix B
Public Design Commission ("PDC")	Public Design Commission of the New York City (f/k/a The Art Commission)
Qualified Joint Venture ("QJV")	A Joint Venture between one or more MBEs and/or WBEs and another person, in which the percentage of profit to which the certified firm or firms is entitled for participation in the Contract, as set forth in the joint venture agreement, is at least 25% of the total profit.
RAP	Remedial action plan
Representatives	The employees, agents, servants, officers, directors, members, independent contractors and subcontractors of a person or entity

Requisition	A request for payment, to be submitted by Consultant not more than once per month, setting forth in detail, for the billing period for which partial payment is requested, the amount requested and Services performed during the billing period
Retainage	Any sum withheld from any payment to the Consultant including, without limitation, those set forth in Part II, Sections 1.5.3, 2.2.1 and 4.2.3
Retainage Payment Date	The date by which any Retainage identified in Part I, Section 1.10 will be paid to the Consultant, as identified in Part I, Section 1.11, subject to the provisions of Part II, Article 2 and Part III, Appendix C
Scope of Services	The Services to be provided by the Consultant in connection with this Contract, as set forth in Appendix B
Services	All of the services to be provided to the Corporation by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
SHPO	State Historic Preservation Officer
Specific Terms and Conditions	Part I of this Contract
Fee and Cost Schedule	Schedule listing names of Consultant's staff, hourly rates and estimated number of days to be spent providing Services, appended to Appendix C when payment for Services or a Portion of the Services is on an hourly rate basis
State	State of New York
Subcontractor	Any person or entity including, without limitation, insurance wholesalers and other insurance brokers contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services
Subcontractors' Costs	The compensation payable by the Consultant to any subcontractor(s) of the Consultant pursuant to a contract(s) entered into pursuant to Part II, Section 4.2

Term	The duration of this Contract, as stated in Part I, Section 1.5
USACOE	United States Army Corps of Engineers
USDOT	United States Department of Transportation
UST	Underground storage tanks
WBEs	Women-owned Business Enterprises
Worker's Compensation	A type of insurance to be purchased and maintained by the Consultant and its Subcontractors, in statutory amounts, for all of its employees engaged in the Services
Work-Made-For-Hire	As defined in Section 101 of the United States Copyright Act, 17 U.S.C. § 101
Work Product	All reports, plans, studies, surveys, data, databases, programs, processes, systems, drawings, tracings, blueprints, photographs, computer drawings, schematics, specifications, log books, correspondence, models, studies, permits approvals, designs, deliverables, samples, presentation materials, analyses, punch lists, submissions, filings, applications, schedules, documents and materials, including, without limitation, those related to inspections, tests and test results, in all formats now known or hereinafter known, prepared or furnished by the Consultant pursuant to this Contract, <u>provided however</u> that Work Product shall not include any Consultant's Underlying Intellectual Property

APPENDIX B

SCOPE OF SERVICES

(Please see RFP)

APPENDIX C

PAYMENTS

Subject to and in accordance with all the terms and conditions of the Contract including, without limitation, Article 2 of the General Terms and Conditions (Part II), the Corporation shall compensate the Consultant for its performance of the Services as follows:

1. **Annual Amounts.** For each twelve-month period during the Contract Term (collectively, the “Contract Years” and each individually, a “Contract Year”), the Corporation shall pay the Consultant a maximum annual amount (the “Maximum Annual Amount”) set forth in the Payment Schedule annexed as Exhibit 1 to Appendix C. The Maximum Annual Amount shall be the maximum compensation for all of the Services provided by the Consultant pursuant to the Contract for that Contract Year and, except as may otherwise be agreed to by the Corporation, all of the Consultant’s expenses in connection therewith, including costs of any Subcontractors. In the event that the Consultant serves less than a twelve-month period during the First Extension Period and/or the Second Extension Period, the Corporation shall equitably compensate Consultant for Services satisfactorily performed during the Contract Year.
2. **Allowable Additional Costs.** The Corporation will pay the Consultant Allowable Additional Costs as such as costs accrue. For the purposes of this Contract, “Allowable Additional Costs” may include the following: special mailings (such as overnight delivery and messenger services), Contract-related long-distance telephone and long distance facsimile charges, out-of-office printing charges, and any other out-of-pocket expenses approved in advance by BNYDC on a direct cost basis with no additional provision for overhead or fee. Allowable Additional Costs shall not include travel to and from the Consultant’s office to any Property, meals or those costs considered to be overhead, such as in-house copying, routine telephone or facsimile charges, typist’s time and the purchase of general office or graphic supplies.
3. **Extra Work.** Subject to Section 1.5.2 of the General Terms and Conditions (Part II), payment for Extra Work shall be made on the basis of the fee schedule (the “Consultant’s Fee Schedule”) annexed hereto as Exhibit 1 to this Appendix C.
4. **Time of Payment.** For each Contract Year (including, without limitation, the First Extension Period and the Second Extension Period, if any), the Corporation will pay the Maximum Annual Amount directly to the Consultant, in arrears, in quarterly installments, commencing on the last day of the month occurring three (3) months immediately succeeding the Commencement Date (the “Initial Payment Date”) and continuing thereafter every three (3) months succeeding the Initial Payment Date throughout the Contract Term.

Requisitions. In order to receive payment for Services, the Consultant will be required to submit a Requisition setting forth in detail, for the period for which payment is requested the amount of payment requested and due for Services. Each Requisition must also contain a representation and

warranty that, except as set forth in the Requisition, the representations and warranties made by the Consultant in Article 7 of the Contract are true and correct as of the date of the Requisition as if made on the date of the Requisition. Requisitions may not be submitted more than once per quarter. All Requisitions shall be subject to BNYDC 's review, verification and approval, and all payments shall be conditioned upon BNYDC 's determination that all Services have been performed satisfactorily and in accordance with the terms of the Contract. An EFT Enrollment Form is attached as Exhibit 2 to this Appendix C and must be completed and returned to the Corporation prior to Consultant's submission of its first Requisition.

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

Non-Original Material	Source	Rights/Limitations/Requirements*

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

APPENDIX E

INSURANCE REQUIREMENTS

- 1. Required Policies and Amounts**
- 2. Additional Insureds**
- 3. Required Provisions**

APPENDIX E

INSURANCE REQUIREMENTS

1. Minimum Required Policies and Amounts*

Workers' Compensation/
Disability Benefits:

In statutory amounts

Employer's Liability:

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

Commercial General
Liability:

A minimum of \$10,000,000 per occurrence, with an annual aggregate of not less than \$2,000,000 in the aggregate

Automobile Liability:

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

Professional Liability:

\$10,000,000 each claim and aggregate

APPENDIX E

INSURANCE REQUIREMENTS

2. Additional Insureds

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

Brooklyn Navy Yard Development Corporation
The City of New York

and their respective employees, members, officials, and officers such other entities and individuals as the Corporation may direct from time to time.

APPENDIX E

INSURANCE REQUIREMENTS

3. Required Provisions

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

“A. Notices from the insurer (the “Insurer”) to the Brooklyn Navy Yard Development Corporation (the “Corporation”) and the City of New York (the “City”), in connection with this policy , shall be addressed to the General Counsel, Brooklyn Navy Yard Development Corporation, at XXXXXX (with a copy to the City Department of Small Business Services, at One Liberty Plaza, New York, NY 10006 or such other addresses as may be specified by the Corporation;

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

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

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

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

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

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

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

APPENDIX F

E.O. 50 SUPPLY & SERVICE RIDER

EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

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

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

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

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

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

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

APPENDIX G

E.O. 50 EMPLOYMENT REPORT FORM

The Consultant shall complete and submit, and if applicable, shall require its Subcontractors to complete and submit, Employment Reports (as required by E.O. 50) to the Corporation which can be found at <https://www.nyc.gov/site/sbs/businesses/contract-compliance.page> under “Forms, Resources, and Instructions” and “Supply Services Contractors”:

Forms, Resources, and Instructions	
Select a topic, or press the enter key on a topic, to learn more:	
Pre-Award Conference (PAC) Training	+
Other Training Videos	+
Supply and Services Contractors	-

The following forms must be submitted for contracts \$100K or more. See [instructions](#).

- [Prime and subcontractors with 50+ employees](#)
- [Prime and subcontractors with less than 50 employees](#)

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

APPENDIX H

DOING BUSINESS DATA FORM

(See attached)

APPENDIX I

WHISTLEBLOWER POSTER



REPORTING INFORMATION TO THE NEW YORK CITY DEPARTMENT OF INVESTIGATION

If you have information of any corrupt or fraudulent activities or unethical conduct relating to a New York City funded project or contract, contact:

Department of Investigation (DOI) Complaint Bureau
212-825-5959

or by mail or in person at:

DEPARTMENT OF INVESTIGATION
80 MAIDEN LANE, 17th FLOOR
NEW YORK, NEW YORK 10038
Attention: COMPLAINT BUREAU

or file a complaint on-line at:

www.nyc.gov/doi

All communications are confidential.

THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a contractor or subcontractor that has a contract with the City or a City contractor of 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 information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of authority relating to a City contract over \$100,000 to DCI or to certain other government officials all of whom must forward the report to DOI.
- Any employee who has made 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.

