



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

REQUEST FOR PROPOSALS

Brooklyn Navy Yard On-Call Design Services

Project Site: Brooklyn Navy Yard, Brooklyn, NY 11205

Release Date: July 22, 2024
Proposal Deadline: September 6, 2024

Contact Information:

Rosario D'Urso
Senior Project Manager
Design and Construction
on-call-design@bnydc.org

This RFP contains the following:

- I. Executive Summary
- II. Pertinent Dates
- III. BNYDC Background
- IV. Scope of Services
- V. Proposal Submission Requirements
- VI. Proposal Administration
- VII. Selection Process
- VIII. Miscellaneous Conditions
- IX. Exhibits
 - A. Declaration of Understanding
 - B. Confirmation of PASSPort Compliance
 - C. Doing Business Data Form
 - D. M/WBE Information Form
 - E. Form of Contract
 - F. Fee Proposal Form

I. EXECUTIVE SUMMARY

The Brooklyn Navy Yard Development Corporation (“BNYDC”) is issuing this Request for Proposals (this “RFP”) to seek proposals (each, a “Proposal”) from entities (“Respondents”) interested in performing on-call design services (the “Services”) in connection with various construction projects within the Brooklyn Navy Yard (the “Yard”).

The selected Respondents will perform Services on a “When and Where” basis in compliance with all applicable legal requirements pursuant to task orders issued by BNYDC as the need for Services arises in connection with various construction projects. The anticipated contract term for



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

performance of the Services is three (3) years with one (1) two-year extension option, exercisable at BNYDC's sole discretion. BNYDC anticipates entering into a contract in an amount not-to-exceed \$1,000,000 with each selected Respondent. BNYDC expects to enter into contracts for Services with approximately six Respondents, depending on the quantity and quality of Proposals received. Each successful Respondent will be eligible for each task order issued under this RFP.

Locally Based Enterprises ("LBEs") and Minority and Women-owned Businesses ("M/WBEs") are encouraged to respond to this RFP. Respondents are also encouraged, if applicable, to include LBEs and M/WBEs as sub-consultants. Any Respondent must identify in its proposal whether it or, if applicable, any of its proposed sub-consultants are LBEs or M/WBEs. Note that it is a requirement under this RFP that all respondents include at least one MBE or WBE on their proposed team as described in Section V.A.3.b and V.B. below. Respondents who fail to satisfy this requirement will not be awarded a contract.

II. PERTINENT DATES

- A. A mandatory pre- submission conference will be held at **10:00 AM on August 12, 2024** via videoconference. All prospective Respondents who plan to attend should contact Rosario D'Urso via email (on-call-design@bnydc.org) to provide names of attendees and email addresses so that attendees can receive details for attending the meeting.
- B. All questions are due no later than **5:00 PM on August 19, 2024**
- C. All Proposals are due no later than **12:00 PM on September 6, 2024**.
- D. BNYDC anticipates conducting interviews (if required) on or about week of October 21, 2024.
- E. BNYDC anticipates awarding contracts in January 2025.

III. BNYDC BACKGROUND

BNYDC is a not-for-profit corporation that serves as the real estate developer and property manager of the 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 450 businesses employing more than 11,000 people and generates over \$2.5 billion per year in economic impact for the City. BNYDC's mission is to fuel the 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.

IV. SCOPE OF SERVICES

The selected Respondents shall provide BNYDC design Services in connection with various projects to be specified by BNYDC and located in the Yard on an on-call, as-needed basis and as more specifically described below and in the Scope of Services ([Appendix B](#) of the Form of Contract attached hereto as [Exhibit E](#)). It is anticipated that the Respondent will lead a team of consultants in providing the Services.



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

A. CONSULTANT TEAM, SERVICES AND ADDITIONAL SERVICES

The members of the Consultant's team are expected to provide the following services:

- Architectural;
- Mechanical, Electrical and Plumbing Engineering ("MEP"); and
- Expediting.

A Respondent and/or its team may provide at its option the following additional services ("Additional Services"):

- Structural engineering;
- Fire Alarm engineering;
- Civil engineering;
- Cost Estimating;
- Fire Protection engineering;
- Audio Visual / Information Technology / Security Design; and/or
- Furniture Selection

Note that each Respondent contracting with BNYDC as Consultant under the Contract must be either an architectural or architectural & engineering firm. A Respondent may also provide **all or any** of the Additional Services. Respondents need not specialize in all the above categories to respond and should note and illustrate the areas of their expertise in their Technical Proposal, as well as their general approach to providing those services.

B. SAMPLE SCOPE OF SERVICES

Although the extent of the required services and consultant team members will vary from project to project and will be specifically described in a task order to be issued by BNYDC for such project, a sample Scope of Services to be provided by Respondent is outlined below, for illustrative purposes only:

1. Provide an initial study including evaluation of three design concepts and develop cost estimates and schedules for each concept.
2. Provide comprehensive architectural and engineering services for the selected concept, including:
 - a. Design and engineering services required for renovations, including schematic design, design development, construction documents, filing, and support during bidding;
 - b. Preparation of detailed cost estimates and phased project schedules for the renovation work;



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

- c. Review of all applicable Federal, State and City codes related to renovations and intended uses of the building or the space within the building;
- d. Obtaining all approvals required for the project, including, but not limited to, filing with the New York City Department of Small Business Services Waterfront Permitting Unit and/or New York City Department of Buildings, Public Design Commission, FDNY and DEP;
- e. Coordination with BNYDC or utility companies for service upgrades or new service connections;
- f. Construction Phase services; and
- g. Closeout, including obtaining a Notice or Certificate of Completion for completed portions of the project.

C. SERVICES TO BE PERFORMED AS PROJECT ASSIGNMENTS

BNYDC intends to solicit requests for Services on an on-call, as-needed basis (each request, a “Project Assignment”) from all Consultants whose Scope of Services under its Contract with BNYDC is within the scope of the Services requested by BNYDC (any awarded Service, a “Task Order Assignment”).

Consultants shall respond to each Project Assignment issued by BNYDC by, among any other additional requirements under its Contract, submitting a response which shall include: 1) the Consultant’s proposed approach to the Project Assignment, including a description of all specific tasks to be performed for the Project Assignment; 2) a projected timeline for all tasks; 3) the names of staff that would work on the Project Assignment, and 4) an estimate of fees in accordance with the Staff and Fee Schedule set forth in its Contract with BNYDC.

BNYDC will evaluate responses received from responding Consultant, including both Consultant’s qualifications and their proposed fees. The selected Consultant shall perform the Task Order Assignment in accordance with the terms and conditions of its Contract with BNYDC.

D. DELIVERABLES

Any Consultant providing Services through an awarded Task Order Assignment shall submit deliverables as required under its Contract with BNYDC, including, but not limited to, progress reports to BNYDC at least monthly or in accordance with any other schedule approved by BNYDC, or at BNYDC’s request (as further described in the Form of Contract attached to this RFP as Exhibit E). Such progress reports shall clearly state the reasons for any actual or anticipated delays in completion of the requested Services.

The Services may include, but are not limited to, the services listed in the form of fee proposal attached as Exhibit F (the “Fee Proposal”), in Appendix B of the Form of Contract attached as Exhibit E, and such other services as may be requested by BNYDC (the “Scope of Services”).

V. PROPOSAL SUBMISSION REQUIREMENTS



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

Each Respondent to this RFP must submit its Proposal on or prior to the Proposal Deadline following the submission procedure set forth in this RFP.

Respondents shall respond to this RFP by submitting a Technical Proposal and Fee Proposal as follows:

- A. Technical Proposal: The technical proposal shall be submitted in a separate sealed package and shall include the information outlined in this Subsection (the “Technical Proposal”). The Technical Proposal shall not include any fee or other consultant costs required for a Respondent’s performance of the Scope of Work. The Technical Proposal shall consist of the following:
 1. Cover Letter
 - a. The cover letter should summarize the Respondent’s understanding of this RFP and ability to provide the services required for the Scope of Services. The cover letter must also include the company name and address, and the name, address, telephone number and e-mail address of the person authorized to represent the responding firm.
 2. Previous Experience/Relevant Knowledge
 - a. Provide no less than three (3) and no more than five (5) examples of previous experience or relevant knowledge from projects completed within the last ten (10) years. Relevant experience should illustrate projects of similar type, scale, context, and scope of services.
 - b. Provide a minimum of three (3) client references for projects most relevant to this submission, completed within the past five (5) years. Provide name, telephone number and e-mail for each reference.
 3. Project Team
 - a. If a Respondent’s team includes more than one staff member, provide an organizational chart and qualifications of the proposed staff schedule including sub-consultants. Include resumes for the proposed Principal-in-Charge, Project Manager and key staff for the Respondent’s firm as well as all sub-consultants, highlighting relevant qualifications. Any changes to the staff schedule of a Respondent’s project team subsequent to the submittal of the Proposal must meet with BNYDC’s approval.
 - b. Each respondent must identify on their proposed team at least one MBE or WBE which has been certified by the NYC Dept of Small Business Services or New York State. This requirement may be met by the Respondent or by a sub-consultant. A copy of the certification(s) shall be included in the Technical Proposal.



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

- B. Fee Proposal: The completed Fee Proposal shall be submitted in a separate sealed package. Respondent shall submit a Fee Proposal for all services to be rendered with respect to the Scope of Work. When completing the Fee Proposal, please note the following:

Each Respondent shall submit a Fee Proposal listing all anticipated staff members/job titles with the maximum hourly rates for each job title, multiplier for fringe benefits and maximum hourly billable rate. The form for the staffing cost is attached hereto as Exhibit F. Indicate which services will be provided by an MBE or WBE firm where indicated on the form. Note that for each task order issued under a contract pursuant to this RFP, a specific M/WBE participation level will be mandated. Any firm not meeting the required participation level will be disqualified from that task order. BNYDC has not yet determined the M/WBE participation levels for each task order, but we expect them to be in the range of 15% - 30% depending on project size, type, and complexity.

In addition to the information described above, Respondent's Proposal must include:

- Declaration of Understanding (attached as Exhibit A hereto)
- Confirmation of PASSPort compliance (attached as Exhibit B hereto)
- Doing Business Data Form (attached as Exhibit C hereto)
- M/WBE Information Form (attached as Exhibit D hereto)
- Acknowledged receipt of any Addendum to this RFP by attaching a signed copy of the Addendum to Respondent's Proposal (see Section VI).
- If a Respondent desires any material or substantive change(s) to the form of Contract (attached as Exhibit E hereto), Respondent must include any such proposed change(s) in its response to this RFP.

VI. PROPOSAL ADMINISTRATION

- A. Pre-Submission Conference:

A mandatory pre-submission conference will be held at **10:00 AM on August 12, 2024** via videoconference. All prospective Respondents who plan to attend should contact Rosario D'Urso via email (on-call-design@bnydc.org) to provide names of attendees and email addresses so that attendees can receive details for attending the meeting. Attendance at the mandatory pre-submission meeting is a condition precedent to BNYDC acceptance of a Proposal. Therefore, if you have not attended the mandatory pre-submission conference, do not submit a Proposal.

- B. Inquiries:

Any questions or explanation desired by Respondents regarding the meaning or interpretation of this RFP must be emailed and received by BNYDC no later than 7 days after the date of the

pre-submission conference (**5:00 PM on August 19, 2024**). BNYDC will evaluate the need to respond to inquiries. No verbal responses will be provided, and any information 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 to:

Rosario D’Urso
Senior Project Manager, Design and Construction
E-mail: on-call-design@bnydc.org

C. Submission Deadline:

Respondents shall deliver one (1) hard copy of the Technical Proposal and one (1) separate, sealed hard copy of the Fee Proposal on or **before 12:00 PM on September 6, 2024** (the “Proposal Deadline”). Respondents shall also submit the Technical Proposal in PDF format on a USB drive or via downloadable link at that time.

Firms must label the envelope: **On-Call Design Services RFP**

Any Proposal received after the Proposal Deadline will be considered for evaluation solely at the discretion of BNYDC. Proposals shall be delivered to:

John Coburn
Vice President Design + Construction
Brooklyn Navy Yard Development Corporation
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205
E-mail: on-call-design@bnydc.org

Attendance at the mandatory pre-submission meeting is a condition precedent to BNYDC acceptance of a Proposal. Therefore, if you have not attended the mandatory pre-submission conference, do not submit a Proposal.

D. 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.

E. Interviews:

Interviews may be held with any or all of the Respondents after the receipt of Proposals. Interviews, if necessary, will be scheduled after BNYDC completes the initial review of Proposals.

VII. SELECTION PROCESS



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

A. Proposal Evaluation

Selection Process:

A BNYDC evaluation committee (the “Committee”) will perform an evaluation of all proposals submitted by Respondents. The Committee will review, evaluate and score each Technical Proposal on its technical merits in accordance with established qualitative and quantitative criteria. This evaluation and scoring will determine the Respondent’s technical rating (“Technical Rating”). A Respondent may be invited for an interview for the purpose of clarifying its Technical Proposal, after which its Technical Rating will be reviewed. Respondents will be ranked in accordance with the total evaluation score.

B. Technical Proposal Evaluation Criteria

The Technical Proposal evaluation criteria include, but are not limited to, the following:

1. Team’s general capacity to perform the services required by this RFP;
2. Qualifications of the team’s member(s), supporting staff, and sub-consultants to provide the Services;
3. Reference letters; and
4. Respondent’s experience contracting or doing business with the City and/or BNYDC.

Each of the above evaluation criteria is weighted by a factor of importance that will remain confidential.

If Respondent fails to identify at least one certified MBE or WBE as part of their project team, as described in Section V.A.3.b., Respondent’s Proposal will be disqualified from the bidding process.

C. Fee Proposal

The Fee Proposals will then be opened. The Respondents determined by BNYDC to have the best combination of Technical Rating and Fee Proposal for the Scope of Work (or designated portion thereof) will be selected to perform the Services on an on-call basis.

D. Selection

Upon selection, each selected Respondent must execute a Contract for Consultant Services substantially in the form attached hereto as Exhibit E (the “Contract”). If a Respondent desires any material or substantive change(s) to the Contract, it must include any such proposed change(s) in its response to this RFP. The contents of the selected Respondent’s 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.

VIII. MISCELLANEOUS CONDITIONS

- A. Non-binding Acceptance of Qualifications: This RFP does not commit BNYDC to award a contract for any work or services described herein.
- B. Incurring Costs: BNYDC is not liable for any costs incurred in the preparation of a response to this RFP.
- C. Modifications: Respondents may be asked to make revisions, additions or deletions to their Proposals as may be required by BNYDC.
- D. Reserved Rights: All Proposal material submitted becomes the property of BNYDC and BNYDC reserves the right at its sole discretion to:
 - 1. Reject any and all Proposals received in response to this RFP at any time prior to signing of a contract with respect to the project described herein;
 - 2. Award contracts to any number of Respondents, or none at all, based on the qualifying responses received in connection with this RFP;
 - 3. Waive, modify or correct any irregularities in Proposals received, after notification to the applicable Respondent;
 - 4. Change the structure of the proposed fee, if such is in the interest of BNYDC;
 - 5. Negotiate the final scope, staff participation, and fee before entering into contract with a successful Respondent;
 - 6. Revise the fee as BNYDC may require subsequent to receipt of a competitively bid proposal for the work described herein;
 - 7. Extend the time for submission of all Proposals after notification to all prospective Respondents;
 - 8. Terminate negotiations with one or more selected Respondents, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable amount of time from the commencement of negotiations;
 - 9. Terminate or modify the RFP process at any time and reissue the RFP;
 - 10. Approve or reject any sub-consultants proposed by the Respondent; and
 - 11. Request a change of any sub-consultant at any time in the contract process.
- E. Contractual Requirements:
 - 1. Any Respondent awarded a contract as a result of this RFP process will be required to sign a Contract substantially in the form as attached hereto as Exhibit E, except as otherwise provided for in this RFP.
 - 2. 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.
 - 3. 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 are required to 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. Non-compliance with these submission requirements shall result in the disqualification of the Proposal and/or the Respondent and/or the cancellation of any contract after its award.



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

4. Notice to Vendors: Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to complete the Doing Business Data Form attached as Exhibit C hereto and return it with this proposal. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

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



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

EXHIBIT A
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 attachments; (ii) has the capacity to execute this project, (iii) agrees to accept payment in accordance with the requirements of this RFP and the Contract previously entered into with BNYDC.

The undersigned further stipulates that the information in this Proposal is, to the best of his/her/their 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)

(Seal, if a Corporation)



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

EXHIBIT B
CONFIRMATION OF PASSPORT COMPLIANCE

The Respondent shall submit this Confirmation of PASSPort Compliance, which replaces VENDEX, and shall include its PASSPort identification number. All VENDEX processes are now completed in the PASSPort Portal, this replaces the paper forms. Please register and complete new questionnaires as soon as possible. PASSPort will not be importing any information from VENDEX. The main purpose of PASSPort is to be a completely paperless interactive system.

Please access to the NYC.gov PASSPort website thru the link below:
<https://www.nyc.gov/site/mocs/passport/about-passport.page>



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

EXHIBIT C
DOING BUSINESS DATA FORM

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.

Entity Information

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

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 _____



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

EXHIBIT D
M/WBE INFORMATION FORM



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

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



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

Vendor Information Form

Name:

Company Title:

Company Name:

Company Address:

Federal Tax ID / SSN:

Email:

Telephone:

Business type: Select One

- Individual/Sole Proprietor
 Corporation

- Partnership
 Other

Business category: Select One

- 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:



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

EXHIBIT E
FORM OF CONTRACT

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
ON-CALL DESIGN SERVICES
CONSULTANT CONTRACT**

BNYDC CONTRACT NO. _____

CONSULTANT CONTRACT

Consultant Contract Number _____
Consultant: _____

Consultant Contract Number _____
Consultant _____

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
ON-CALL DESIGN SERVICES
CONSULTANT CONTRACT
TENANTS**

BNYDC CONTRACT NO. _____

PART I SPECIFIC TERMS AND CONDITIONS

PART II GENERAL TERMS AND CONDITIONS

PART III APPENDICIES

Consultant Contract Number _____
Consultant: _____

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
ON-CALL DESIGN SERVICES
CONSULTANT CONTRACT**

BNYDC CONTRACT NO. _____

Part I

SPECIFIC TERMS AND CONDITIONS

Brooklyn Navy Yard Development Corporation (“BNYDC”) and the Consultant identified below, in consideration of the mutual covenants contained in this Contract (as defined below) and other good and valuable consideration, hereby agree to the terms and conditions set forth in:

- a. These Specific Terms and Conditions (“Part I”) set forth immediately below; and
- b. The General Terms and Conditions (“Part II”) annexed hereto and made a part hereof; and
- c. 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:** The date of the Contract is as of _____

1.4 **Commencement Date:** _____

1.5 **Term: Three (3) years from Commencement Date**

1.6 **Maximum Contract Price: \$** _____

1.7 **Project: On-Call Design Services**

1.8 **Project Site: Task Orders for various projects.**

1.9 **Allowable Additional Costs:** The Allowable Additional Costs are set forth on Part II, Appendix B

2. Parties

2.5 **BNYDC:** BROOKLYN NAVY YARD DEVELOPMENT CORPORATION, a not-for-profit corporation, organized under the laws of the State of New York.

2.6 **President:** The President of BNYDC or his designee. BNYDC has the right to delegate the responsibilities of the President to any person or entity as the President deems appropriate.

2.7 **The Consultant:** having an office at:

Consultant Contract Number _____

Consultant: _____

2.8 Principal: Person in Charge:

3. **Notice Parties and Addresses**

3.5 Notices to BNYDC:

Brooklyn Navy Yard Development Corporation
Building 77
141 Flushing Avenue, Suite 801
Brooklyn, New York 11205
Attn: General Counsel

3.6 Notices to the Consultant:

Attn:

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

(signature page follows)

Consultant Contract Number _____
Consultant: _____

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

**BBROOKLYN NAVY YARD
DEVELOPMENT CORPORATION**

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Consultant Contract Number _____

Consultant: _____

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
ON-CALL DESIGN SERVICES
CONSULTANT CONTRACT**

BNYDC CONTRACT NO. _____

**PART II
GENERAL TERMS AND CONDITIONS**

ARTICLE 1	GENERAL TERMS AND CONDITIONS	5
ARTICLE 2	COMPENSATION.....	8
ARTICLE 3	SUSPENSION OR TERMINATION	9
ARTICLE 4	PERSONNEL AND SUBCONTRACTORS.....	12
ARTICLE 5	DOCUMENTS AND MATERIALS	14
ARTICLE 6	INDEMNIFICATION, CLAIMS AND INSURANCE.....	17
ARTICLE 7	REPRESENTATIONS AND WARRANTIES.....	20
ARTICLE 8	APPLICABLE LAWS, RULES AND REGULATIONS.....	21
ARTICLE 9	MISCELLANEOUS	24

Consultant Contract Number _____
Consultant: _____

**BROOKLYN NAVY YARD DEVELOPMENT CORPORATION
ON-CALL DESIGN SERVICES
CONSULTANT CONTRACT
TENANTS**

BNYDC CONTRACT NO. _____

**PART II
GENERAL TERMS AND CONDITIONS**

BNYDC and the Consultant agree as follows:

ARTICLE 1

PERFORMANCE OF SERVICES

1.1 Services. The Consultant acknowledges that there must be a relationship of trust and confidence established between the Consultant, BNYDC, and all other service providers, therefore, Consultant covenants to furnish its best skill, judgment, expert business administration and management in performing Consultant's Services under this Contract ("Consultant's Covenant") In reliance on Consultant's Covenant and the terms and Conditions of this Contract BNYDC 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.

1.2.1 The Consultant shall commence the Services upon or promptly after the Commencement Date and shall complete the Services and each Portion of the Services within the approximate standard time or times as set forth in **Appendix B**, and in accordance with any directive given and Progress Schedule approved by BNYDC, 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 President in his or her sole discretion. The decision of the President as to the granting of the extension and its length shall be binding upon the Consultant.

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 provide the work as 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 President 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 President/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 President, whose decision shall be final and binding upon the Consultant. The President 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 President shall act reasonably in exercising her or his authority under this Contract. The President and any other person or agent duly authorized to act for and on behalf of BNYDC shall not, by virtue of such authority or action, be liable in any manner to the Consultant.

1.4.2 The Consultant's performance under this Contract shall be judged by standards typical of consultants in the same or similar practice areas in the New York City Statistical Metropolitan Area ("NYCSMA"). The Consultant agrees to perform all of the Services in a professional manner and in accordance with the highest standard and practices as are customary for such Services in the NYCSMA, as the President may deem appropriate and acceptable.

1.5 Changes to the Services.

1.5.1 The Consultant shall not make any changes in the Services without prior authorization in writing from the President. The Consultant shall revise or correct any Work Product submitted in accordance with this Contract until accepted by the President and accepted by all agencies whose approval is required, 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 President 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 President in writing within three (3) days of such directive. The President shall determine whether such altered Services are (i) within the Scope of Services; or (ii) Extra Work that is substantially within the general purview of the Scope of Services and constitutes an Allowable Additional Cost; or (iii) Extra Work requiring an amendment to the Scope of Services and the Contract. The President's determination shall be final, binding and conclusive.

1.5.3 The President 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 BNYDC, such credit shall be immediately due and owing to Corporation, and the Consultant shall either pay such credit to BNYDC or BNYDC may withhold the credit amount from any future payments by BNYDC to the Consultant, at the exclusive option of BNYDC.

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 the City Contract and/or the Lease, Indemnification and Third-Party Beneficiary.

This Contract is a subcontract under either the City Contract or the Lease. The Consultant acknowledges that it has reviewed the City Contract and the Lease and agrees to comply with the City Contract or the Lease with respect to the Services and not to violate, or through its acts or failure to act cause BNYDC to violate, the City Contract or the Lease. The Consultant agrees to defend, indemnify and hold harmless BNYDC from any claim, liability or judgment to which BNYDC 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 BNYDC or City or if the Consultant breaches this Contract.

1.8 Acts to be performed by BNYDC.

BNYDC shall perform the following acts in connection with this Contract:

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

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

ARTICLE 2
COMPENSATION

2.1 Payments.

2.1.1 Subject to, and in accordance with this Article 2, BNYDC 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 acceptable to BNYDC and shall be supported by all appropriate and necessary documentation or other evidence relating to the amounts set forth in the Requisition, as BNYDC may require including, but not limited to invoices, receipts and vouchers from subcontractors and suppliers and where applicable, the time sheets and/or certified payroll reports of the Consultant's staff and its Principal.

2.1.3 The President 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 President will approve the Requisition. All payments to the Consultant will be made in accordance with this Article 2.

2.1.4 Subject to 3.5.3, Final Payment will be due only upon Final Completion.

2.1.5 The Consultant, with the President's prior approval, may exceed the Maximum Payment allocated to a particular Portion of the Services if the Consultant 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 President 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 BNYDC pay the Consultant more than the Maximum Contract Price.

2.2 Miscellaneous Payment Provisions.

2.2.1 If BNYDC shall have reasonable grounds for believing that:

- (i) the Consultant will be unable to perform the Services or any Portion thereof fully and satisfactorily in accordance with any Progress Schedule; or
- (ii) a meritorious claim exists or will exist against BNYDC, 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 BNYDC may withhold payment of any amount otherwise due and payable to the Consultant hereunder. Any amount so withheld may be retained by BNYDC for such period as it may deem advisable to protect BNYDC and the City against any loss and may, after written notice to the Consultant, be applied in satisfaction of any claim herein described.

2.2.2 By virtue of making payments to the Consultant BNYDC 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.

2.2.3 Upon acceptance by the Consultant of the Final Payment, the Consultant agrees that it shall be deemed to have fully released BNYDC and the City from any and all claims, demands and causes of action whatsoever which the Consultant has or may have against BNYDC or the City in connection with this Contract and, upon the request of BNYDC, 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 BNYDC 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 days (90) upon written notice to the Consultant, for any reason deemed by BNYDC 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 BNYDC or the City, but the Term specified in Part I of this Contract and the Contractor'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 BNYDC may thereafter specify in writing.

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

3.3 Defaults and Termination for Cause.

3.3.1 In addition to any other right that BNYDC may have, upon the occurrence of an Event of Default, BNYDC shall have the right to declare the Consultant in default and terminate this Contract, in whole or in part, for cause, by giving notice in writing 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 is independently 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 BNYDC;
- ii. The Consultant fails to complete the Services, or any Portion thereof, within the time limits provided in this Contract or any Progress Schedule approved by BNYDC;
- iii. The Consultant violates any term, covenant or provision of this Contract;
- iv. The Consultant fails to comply with any Applicable Statutes or any Applicable Agreements;
- v. Any representation or warranty made by the Consultant in Article 7 or in any other Article in this Contract shall prove to be untrue or be breached;
- vi. The Consultant becomes insolvent, files for bankruptcy or is adjudged a bankrupt; or
- 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 BNYDC;

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 BNYDC or the City.

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

3.5 Compensation Upon Termination.

3.5.1 Upon termination with or without cause, the Consultant shall promptly present to BNYDC 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 BNYDC may demand in order to verify such statement of costs including, without limitation, canceled checks, subcontracts, and paid receipts and bills from Subcontractors. BNYDC will review the statement of costs and review or audit any supporting documentation provided by or in the Consultant's possession. BNYDC will notify the Consultant in writing of the results of such review or audit and the amount approved for payment ("Costs").

3.5.2 If the termination was for cause, BNYDC may, in its sole discretion, have the Services completed by another consultant or elect not to complete the Services. BNYDC shall deduct from all monies then due to the Consultant, an amount equal to:

- i. if BNYDC elects to have the Services completed by another consultant, the sum of (a) all expenses incurred in completing the Services, and (b) all incidental expenses incurred by BNYDC as a result of the termination for cause including, without limitation, all actual legal fees and accounting fees; or
- ii. if BNYDC elects not to complete the Services, the sum of (a) the value of the Services not completed, as determined by BNYDC, in its sole judgment, and (b) all incidental expenses incurred by BNYDC as a result of the termination for cause including, without limitation, all actual legal fees and accounting fees.

3.5.3 If BNYDC determines that there are Costs due the Consultant, then, subject to any other applicable provisions of this Contract including, without limitation, Sections 3.5.4 and 3.5.5 hereof, BNYDC will pay the Costs due Consultant. Such payment shall constitute full and Final Payment to the Consultant and the Consultant's Requisition therefor will be so marked and list the amount verified and approved for payment by BNYDC. However, if BNYDC determines that there is a balance due from the Consultant to BNYDC, then the last payment made by BNYDC to the Consultant less the balance due from the Consultant shall constitute the full and Final Payment.

3.5.4 BNYDC need not wait until the completion of the Services to seek the enforcement of its rights against the Consultant terminated for cause, and no monies shall be due or payable to the terminated Consultant until the Services are completed.

3.5.5 Notwithstanding any provision in this Contract to the contrary, the Consultant shall not recover as part of its Costs any unearned or anticipated overhead or profit for itself or for its Subcontractors as a result of any termination, whether for convenience or for cause.

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

3.6 No Release. Termination of this Contract, whether by expiration of its Term or otherwise, shall not release the Consultant from any liability to BNYDC 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 BNYDC including, without limitation, the President, 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 President, 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 BNYDC 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 President and obtain the President's prior approval of the substitution. Notwithstanding anything contained herein to the contrary, all personnel furnished by the Consultant as required under this Contract are employees of the Consultant or approved Subcontractors of the Consultant and not employees or subcontractors of BNYDC or the City.

4.2 Subcontractors.

4.2.1 The Consultant is authorized to enter into subcontracts for specialized professional services as required for performance of the Services subject to the prior written

approval of the President 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 BNYDC, is responsible for the Subcontractor's work, acts and omissions.

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

4.2.3 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 BNYDC or the City; and
- ii. Neither BNYDC nor the City incur any liability by virtue of any act, omission, negligence, or obligation of the Subcontractor or the Consultant; and
- iii. The Subcontractor shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorney's fees and/or any fee charge or expense due to any act or omission of the subcontractor, its agents and employees; and
- iv. All work 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 4.2.3 in any subcontract, the Consultant hereby agrees to and shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorney's fees and/or any fee charge or expense, as a result of said failure.

4.2.4 The Consultant shall provide BNYDC with a list of all Subcontractors employed for the performance of the Services. The Consultant will furnish each such subcontractor whose subcontract:

- i. amount totals \$100,000 or more; or
- ii. whose aggregate business directly with the City, or as a subcontractor in the preceding twelve months (12) totals \$100,000 or more to complete vendor profiles in the MOC PASSport portal. The Consultant shall cause each such Subcontractor to complete a PASSport profile and submit the profile to MOC

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.

4.3 Person in Charge.

The Consultant has designated a Person-in-Charge who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services. Substitution of said person shall be made only with the prior written approval of the President. 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.

The 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 President 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 President 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 The Work Product is the exclusive property of BNYDC. BNYDC may use any Work Product prepared by the Consultant in such manner, for such purposes, and as often as BNYDC 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 BNYDC'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 BNYDC 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 BNYDC, 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 BNYDC 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 BNYDC 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 BNYDC during the Contract Term.

5.2.7 The Consultant acknowledges that BNYDC 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 BNYDC 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 President, upon the President'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 President. If the original Work Product or the revised Work Product is not acceptable to the President, BNYDC 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 President.

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 shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorney's fees and/or any fee charge or expense due to or 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 BNYDC in the strictest confidence. Consultant agrees to:

- i. Use the Confidential Information solely for evaluation and the performance of the Services under this Contract;
- ii. Not disclose the Confidential Information outside of its Subcontractors who have agreed in advance in writing to be bound by the terms of this Section 5.3 and its employees and to limit dissemination to only those Subcontractors and employees who have a need to know it in order to accomplish the Services;
- iii. Execute any confidentiality agreements required by any governmental or other entities or individuals which provide any information, records, data, materials, documents or electronic files to Consultant for use in performance of the Services; and
- iv. Not disclose the Confidential Information for five (5) 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 BNYDC.

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, BNYDC shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. Consultant shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorney's fees and/or any fee charge or expense due to or 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 BNYDC and the City.

6.1.1 The Consultant shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorney's fees and/or any fee charge or expense due to or because of any act or omission of the Consultant, its agents, employees or subcontractors in connection with this Contract or because of any negligence or any fault or default of the Consultant, its agents, employees or subcontractors.

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 shall indemnify, defend and hold harmless BNYDC and the City and their agents, employees, members, officials and officers against any and all claims, damages, awards, judgments, liabilities, expenses, fines, penalties, costs and/or fees incurred by or imposed upon BNYDC and/or the City and/or their Representatives, including reasonable attorney's fees and/or any fee charge or expense due to or arising out of 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 BNYDC.

6.2.1 The Consultant shall look solely to the funds appropriated by BNYDC for this Contract for the satisfaction of any claim or cause of action the Consultant may have against BNYDC in connection with this Contract or the failure of BNYDC to perform any of its obligations hereunder. In no event shall BNYDC'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 BNYDC 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, employee, servant, officer, agent or other person authorized to act on behalf of BNYDC shall have any personal liability in connection with this Contract or any failure of BNYDC to perform its obligations hereunder.

6.2.4 No person or entity shall have any right against the President or any member, employee, servant or officer, agent of the City or BNYDC or other person authorized to act on their behalf or any claim against the City or BNYDC by reason of the failure or refusal to withhold money pursuant to Section 2.3.1 hereof.

6.2.5 The Consultant agrees that no cause of action against BNYDC 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 BNYDC any and all assistance, which BNYDC 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 BNYDC 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 BNYDC may require, the Consultant, at its sole cost and expense, shall purchase and maintain the insurance described in this Section 6.3 and the annexed **Appendix E**, as may be applicable and as may be required by BNYDC.

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

- (i) Be in form and substance satisfactory to BNYDC;
- (ii) Be in the minimum face policy amounts set forth in **Appendix E**; and
- (iii) List as Additional Insureds all the entities identified in **Appendix E**.

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

6.3.4 The Consultant shall require each of its Subcontractors to purchase and maintain, or be covered by, at no cost or expense to BNYDC 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, maintain and forward to BNYDC, the certificates of insurance required by this Section in the amounts and for the periods required by this Section prior to the commencement of their work.

6.3.5 Prior to the commencement of the Services the Consultant shall provide BNYDC with original certificates of insurance for each policy required for compliance with this Contract, for itself and its Subcontractors as set forth in **Appendix E**.

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

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

(i) Workers' Compensation, and Employer's Liability Insurance. The Consultant shall purchase and maintain and shall require each of its Subcontractors to purchase and maintain workers' compensation insurance in statutory amounts, and employer's liability insurance, for all of its employees engaged in the Services. Consultant's failure to comply with this Section 6.3.8(i) shall render this Contract voidable at the sole option of BNYDC.

(ii) Commercial General Liability. The Consultant shall purchase and maintain commercial general liability insurance. The certificate of insurance must indicate that such insurance is on a "per occurrence" and a "per project" aggregate basis. The commercial general liability policy shall not contain any provisions for exclusions from liability other than provisions for exclusion from liability forming part of the standard, basic unamended and unendorsed commercial general liability policy. If there is more than one named insured on the liability policy (ies) then the certificate of insurance must include a cross-liability endorsement providing severability of interests so that coverage will respond as if separate policies were in force for each named 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 must immediately suspend performance of the Services. 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 BNYDC to order suspension, then BNYDC may, at its sole option, obtain insurance affording coverage equal to that required hereunder, the cost of such insurance to be payable by the Contractor to BNYDC.

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

(iv) Umbrella/Excess Liability Coverage. If required by BNYDC the Consultant shall purchase and maintain umbrella/excess liability insurance, specifically listing commercial general liability, comprehensive automobile liability and workers' compensation and employer's Liability as primary coverages. The certificate of insurance must indicate that such insurance afforded by this Section 6.3.8(iv) is on a "per occurrence" basis and a "per project" aggregate basis.

(v) All additional policies listed in Appendix E.

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

6.3.9 The policies to be maintained by the Consultant hereunder shall be primary for claims due to and/or arising out of this Contract, and shall state that insurance, if any, carried by BNYDC, the City or any other Additional Insured will excess over all Consultant's policies combined. The Consultant shall comply with the provisions of all policies required pursuant to this Contract, and shall upon its acquiring knowledge of any claim, accident and/or losses give the insurer, BNYDC, the City and the Additional Insureds prompt and timely notice of such claims, accidents and losses.

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

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants that:

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

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

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

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

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

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 BNYDC 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. 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

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

8.1.1 If BNYDC 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 BNYDC in writing.

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

8.1.3 With respect to any action between BNYDC and the Consultant in Federal Court located in the City and County of New York, State of New York, 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 and County of New York, State of New York.

8.1.4 If the Consultant commences any action against BNYDC in a court located other than in the City and County of New York, State of New York, then, upon request of BNYDC, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and County of New York, 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 and County of New York, State of New York.

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

8.3 Compliance with the Law. The Consultant agrees that all acts to be performed by it in connection with this Contract shall be performed in strict conformity with all Legal Requirements, including without limitation, Applicable Statutes and Applicable Agreements, including those set forth in Appendix M with regard to the Paid Sick Leave Law and Appendix L with regard to the Whistleblower Protection Expansion Act. Consultant shall ensure that the Services are performed in a location and manner free from recognized hazards and shall comply with Occupational Safety and Health Administration (“OSHA”) standards, rules and regulations. Consultant shall regularly examine workplace conditions and use safe and well-maintained tools, equipment and Personal Protective Equipment to ensure conformance with applicable OSHA standards.

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.

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 BNYDC in the form annexed to this Contract as **Appendix G**.

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

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

8.5 Women and Minority-Owned Business Enterprises. The Consultant understands that, while not a requirement to undertake the provision of Services, BNYDC encourages participation by MBEs and WBEs in the provision of the Services. In order to be considered W/MBEs for purposes of this Contract, the W/MBEs must have received certification as such by DSBS. Businesses that have been certified as W/MBEs by the PANYNJ may be eligible to receive expedited certification from DSBS after completing the Expedited Certification Affidavit, a copy of which is available from DSBS. The Consultant hereby covenants and agrees that it shall provide BNYDC with report(s) as often and with such details as may be reasonably required by BNYDC of any W/MBE used in the provision of Services.

8.6 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.

8.7 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.

8.8 Sales and Use Tax.

8.8.1 The Consultant acknowledges that BNYDC 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 BNYDC'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.

8.8.2 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.

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

ARTICLE 9

MISCELLANEOUS

9.1 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 BNYDC 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 BNYDC or any of their Representatives in connection with this Contract, but shall be deemed to be independent contractors performing work or professional services for BNYDC, and shall be deemed solely responsible for all acts taken by them pursuant to this Contract.

9.2 Assignment. This Contract is intended to secure the Services of the Consultant or a competent Representative or Representatives of the Consultant approved by the President. The Consultant shall not assign, convey, sublet or transfer this Contract or the Consultant's rights hereunder without the written consent of the President. BNYDC shall have the right to assign, convey, sublet or transfer this Contract or BNYDC'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.

9.3 Right to Inspect. BNYDC, 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.

9.4 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 BNYDC, 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 seven years after termination of this Contract.

9.5 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.

9.6 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 affects this Contract.

9.7 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.

9.8 Severability. If any clause, provision or section of this Agreement is 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.

9.9 Notices.

9.9.1 Each written 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 (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 written notice sent in accordance herewith.

9.9.2 Every notice, demand, request or other communication 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 and (ii) five (5) business days after the date of deposit in the first-class U.S. mails.

9.10 Non-Waiver Failure of BNYDC 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 BNYDC and the same may be selectively enforced or raised as a basis of a claim or cause of action at the option of BNYDC.

9.11 Refusal to Testify.

9.11.1 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.

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

9.11.3 If any non-governmental party to the hearing requests an adjournment, the Commissioner who convened the hearing or BNYDC may, upon the Commissioner granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subsection 9.11.5 below without the City or BNYDC incurring any penalty or damages for delay or otherwise.

9.11.4 BNYDC 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 BNYDC, 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 BNYDC 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 BNYDC, as the case may be.

9.11.5 The Commissioner shall consider and address, in reaching her or his determination, and BNYDC and the Commissioner shall consider and address, in assessing an appropriate penalty, the factors in subparagraphs (i) and (ii) below. The Commissioner and BNYDC 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 BNYDC.

(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 9.11.4 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 9.11.2(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.

9.11.6 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.

9.11.7 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.

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

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

9.12 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
ON-CALL DESIGN SERVICES
CONSULTANT CONTRACT**

BNYDC CONTRACT NO. _____

PART III

APPENDICES

APPENDIX A	DEFINITIONS
APPENDIX B	SCOPE OF SERVICES
APPENDIX C	PAYMENTS/ STAFF AND FEE SCHEDULE
APPENDIX D	INTENTIONALLY DELETED
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	E.O. 50 PAYROLL REPORT FORM AND INSTRUCTIONS
APPENDIX I	INTENTIONALLY DELETED
APPENDIX J	INTENTIONALLY DELETED
APPENDIX K	INTENTIONALLY DELETED
APPENDIX L	WHISTLEBLOWER PROTECTION EXPANSION ACT
APPENDIX M	PAID SICK LEAVE

APPENDIX A

DEFINITIONS

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

Additional Insureds	All individuals and entities listed in Appendix E
Allowable Additional Costs	As defined in Appendix B Scope of Services
Applicable Agreements	Various governing agreements related to the Funds, the Project and/or this Contract, including, without limitation, any specific "Applicable Agreements" identified in Part I, and any other governing agreement or MOU with the City, State and/or federal governments, or any agency thereof
Applicable Statutes	Any and all federal, state and local laws, statutes, rules, regulations and orders applicable to this Contract, the Funds or the Project, including, without limitation, any specific "Applicable Statutes" identified in Part I
BNYDC	Brooklyn Navy Yard Development Corporation
City	The City of New York
City Contract	The Contract between the City and BNYDC, in effect at the time this Consultant Contract becomes effective.
Comptroller	The Comptroller of the City or his or her designee
Commencement Date	The date stated in Part I, Section 1.4 hereof upon which the Consultant shall commence the Services.
Comptroller General	The Comptroller General of the United States of America
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)

Consultant Contract Number _____
Consultant: _____

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 person or entity stated in Part I, Section 2.3 hereof contracted by BNYDC to perform the Services pursuant to this Contract,
Contract	This Consultant Contract as defined in Part I, Section 1.1 hereof between the Consultant and BNYDC to which this Appendix A is attached,
Contract Date	The date stated in Part I, Section 1.3 hereof.
Corporation	Brooklyn Navy Yard Development Corporation, a local development corporation organized pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, ("NPCL") or any successor.
CPL	Contractor Pollution Liability Insurance
Consultant's Covenant	The Covenant between Consultant and BNYDC contained in Part II, Article 1, section 1.1
DBEs	Disadvantaged Business Enterprises
President	The President of BNYDC or his or her designee
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
Division	Division of Labor Services of DSBS
DSBS	New York City Department of Small Business Services
E.O. 50	Executive Order No. 50 (1980), as amended or revised from time to time
Employment Report	Required by E. O. 50, these reports are to be completed and submitted to BNYDC in the form annexed to this Contract as Appendix G

Consultant Contract Number _____
Consultant: _____

Extra Work	A significant alteration to the work or Services that the Consultant has been directed to perform by the President as described in Part II, Section 1.5.2
Event of Default	As described in Part II, Section 3.3.2
Federal Courts	United States Federal Courts located in the City, County and State of New York.
Final Completion	The date when all Services contemplated in this Contract are completed to the satisfaction of the President
Final Payment	The last payment by BNYDC to the Consultant under the Contract upon Final Completion or as provided in Part II, Section 3.5.3
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
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
Lease	The amended and restated lease dated July 1, 2012, between the City of New York, as lessor, and Brooklyn Navy Yard Development Corporation, as Lessee, as the same may have been and may hereafter be further amended, and shall include any severed lease created therefrom, for the premises commonly known as the Brooklyn Navy Yard.
Legal Requirements	All applicable laws, rules, regulations, ordinances, codes and orders of all federal, state and local governmental authorities, agencies, departments or bureaus having jurisdiction over and which affect the work and/or Services under this Contract including, without limitation, all Applicable Agreements and all Applicable Statutes
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 Annual	The maximum amount that shall be paid for Services under the

Consultant Contract Number _____
Consultant: _____

Payment	Contract in any twelve (12) month period.
Maximum Contract Price	As stated in Part I, Section 1.6 the maximum amount that shall be paid for all Services under the Contract,
Maximum Payment	The maximum amount payable for each Portion of the Services during a billing period
MOC	The Mayor's Office of Contract Services
MBEs	Minority-owned Business Enterprises
MOU	Memorandum of Understanding
New York State Courts	Courts of the State of New York in the City and County of New York
PANYNJ	The Port Authority of New York and New Jersey
PASSport	Procurement and Sourcing Solutions Portal
Payroll Report	Forms that the Consultant and any Subcontractors that provide any on-site construction activity must complete in the form annexed to this Contract in Appendix I
Person In Charge	As identified in Part I, Section 2.5, the member(s) of the Consultant's professional staff who will have primary responsibility to perform and/or supervise and coordinate the performance of the Services
PLL	Pollution Legal Liability Insurance Policy
Portion	Each portion, task or phase of the Services as described in Appendix B and/or Appendix C
Principal	The most senior officer, or member of the Consultant's staff responsible for the performance of Services as identified in Part I, Section 2.4
Progress Reports	Reports which Consultant is obligated to prepare that show the status of the Services in accordance with the Progress Schedule

Consultant Contract Number _____
Consultant: _____

Progress Schedule	Any schedule issued or approved by BNYDC for the performance of the Services, including, without limitation, Project or Services milestones, deadlines or delivery dates in accordance with Appendix B
Project	As identified in Part I, Section 1.7, and described in detail in Appendix B
Project Manager	A person designated by BNYDC to serve as a liaison between BNYDC 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
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
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 BNYDC by the Consultant pursuant to the Contract, as described in greater detail in Appendix B
Specific Terms and Conditions	Part I of this Contract
Staff and Fee Schedule	Schedule listing names of Consultant's staff, hourly rates based on service provided, and standard times for completion of Services, as further described in Appendix C
State	State of New York
Subcontractor	Any person or entity including, without limitation, contractors, consultants, subconsultants, vendors and subcontractors of such persons or entities, employed or retained by the Consultant in accordance with the Contract to provide any services, work, materials, equipment or supplies in connection with the Services

Consultant Contract Number _____
Consultant: _____

Subcontractors' Cost	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 time period of this Contract, as stated in Part I, Section 1.5
WBEs	Women-owned Business Enterprises
W/MBESs	WBEs and MBEs, collectively
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, computer drawings (including, but not limited to, computer-assisted drawing ("CAD") files), 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

Consultant Contract Number _____
Consultant: _____

APPENDIX B

SCOPE OF SERVICES

I. GENERAL INFORMATION

- A. The Consultant shall perform design services (the “Services”) on an on-call, as needed basis for the Term unless (i) the Maximum Contract Price has been paid to Consultant prior to the expiration of the three-year Term, or (ii) the date of any earlier termination of the Contract. Notwithstanding the foregoing, the Consultant acknowledges that the Corporation is not required to direct the Consultant to perform any minimum amount of Services during the term of the Contract and that therefore the total compensation payable to the Consultant pursuant to Article 2 and Appendix C of the Contract may be less than the Maximum Contract Price.
- B. “Allowable Additional Costs” as utilized to determine costs of providing the Services described herein shall mean: out-of-pocket-expenses which may include the cost of purchasing project-related industry data, printing, special mailings (such as overnight delivery and messenger services), services related to long distance telephone and facsimile charges, and any other out-of-pocket expenses, approved in writing, in advance by the President, on a direct cost basis (with no additional provisions or overhead fee). Allowable Additional Costs shall not include travel to and from Project Site(s), meals (unless the project requires work effort beyond normal business hours and the written approval of the Corporation has been obtained), 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.
- C. The performance of the Services under any given task order (“Task Order”) shall not relieve the Consultant from any obligation to correct any defective work subsequently discovered.
- D. Each Task Order will have its own process. The Task Order steps in that process are listed below:
 - a. BNYDC shall initiate each Task Order by emailing the Consultant a general description of the portion of the Services to be provided as part of such Task Order and requesting the Consultant to submit an electronic, written proposal within a specified timeframe. BNYDC may elect to solicit proposals from several firms for any given Task Order. The proposal shall consist of, but not be limited to:
 - i. A proposed scope of work based on the portion of the Services to be provided as part of such Task Order;

- ii. A total lump sum cost proposal broken down by Task (as defined below); or a cost proposal broken down on an hourly basis based on the rates submitted in the Contract, which hourly rate-based proposal may include a provision of up to five percent (5%) of the total of the Task Order for Allowable Additional Costs (if any).
- iii. An estimated schedule for completion (a "Work Plan"). Each Work Plan shall also include, but not be limited to, the following:
 - 1. A detailed list of all Tasks, sub-tasks, including approvals, submittals, and milestones required in connection with the Task Order;
 - 2. The time necessary to complete the various Tasks, sub-tasks, including approvals, submittals, and milestones;
 - 3. Projected completion/target dates for all required Tasks to be performed in connection with the Task Order; and
 - 4. The cohesiveness and assessment of the various elements of the Work Plan.
- b. The Consultant selected by BNYDC to complete the Task Order shall revise the Work Plan submitted in accordance with this Contract until accepted by BNYDC. The Consultant shall proceed with the Services in connection with the Task Order upon receipt of written notification from BNYDC of the Consultant's selection to perform the Services for the Task Order and directing the Consultant to proceed with the Task Order ("Notice to Proceed").
- c. The Consultant shall submit monthly progress reports to the President during the entirety of the Task Order (each monthly progress report, a "Progress Report"), commencing from the date Consultant received the Notice To Proceed continuing each month thereafter including a final report upon the completion of the Task Order (each monthly period during such time constituting a "Reporting Period"). The Progress Report shall include an analysis of the Consultant's progress as it relates to the Task Order and approved Work Plan. The Progress Report shall include, but not be limited to, the following:
 - i. A narrative description of the Services performed during the Reporting Period;
 - ii. The reasons for any delays in the targeted completion dates;
 - iii. Changes in completion/target dates for the required Services;
 - iv. The need and justification for any extensions of time; and

- v. A narrative description of the Services projected for the next Reporting Period.

II. GENERAL SCOPE OF SERVICES

The Consultant shall provide BNYDC design Services in connection with various projects to be specified by BNYDC and located in BNYDC on an on-call, as needed basis.

As part of the Services, Consultant shall perform design assignments (“collectively, the “Assignments”) on an on-call, as needed basis, which Assignments are expected to include the following services: architectural and /or mechanical, electrical and plumbing engineering (“MEP”), and expediting. Assignments may include additional services that a Consultant and/or its team may provide at its option: structural engineering, fire alarm, civil engineering, cost estimating, fire protection, AV / IT / security design, or furniture selection. Consultant shall be either an architectural or MEP firm. Consultants need not specialize in all the above categories to respond and should note the area of their expertise in their proposal, as well as their general approach to providing those services.

III. SPECIFIC SCOPE OF SERVICES

The Services may include, but are not limited to, the following tasks, which shall be provided (in whole or in part) as part of an Assignment and on an on-call, as needed basis (each individually a “Task” and collectively the “Tasks”). Tasks and subtasks are illustrative rather than exhaustive examples of services required.

The following design services to be performed by selected design-firm consultants, that is architectural firm as a result of this RFP:

Building renovations, building subdivision, and interior construction that may include the following:

- A. Demising of an existing open floor into smaller tenant units and common areas; and
- B. Upgrading finishes in an existing lobby Interior demolition of old partitions and equipment;
- C. Refinishing of floors, walls, and/or ceilings;
- D. Construction of new offices, conference rooms, pantry, shops, production areas;
- E. New electric panels and lighting;
- F. New HVAC and plumbing; and
- G. AV/IT/Security and furniture coordination.

IV. CONSULTANT'S SUBMITTED SAMPLE SCOPE OF SERVICES

Consultant Contract Number _____
Consultant: _____

APPENDIX C

PAYMENTS

Consultant shall be paid for each Portion of the Services at either (i) the respective amounts set forth for in the following table for Task Orders requesting a cost proposal broken down on an hourly basis or, (ii) with respect to Services performed pursuant to a Task Order requesting a total lump sum cost proposal broken down by Task, as set forth in the Progress Schedule approved by BNYDC.

STAFF AND FEE SCHEDULE

TITLE	NAME	MAXIMUM HOURLY RATE (A)	MULTIPLIER (B)	MAXIMUM HOURLY BILLABLE RATE(C) =(A) X (B)
REQUIRED SERVICES:				
<u>1. ARCHITECTURAL</u>				
<u>2. MECHANICAL ENGINEERING</u>				
<u>3. ELECTRICAL ENGINEERING</u>				
<u>4. PLUMBING</u>				

Consultant Contract Number _____
 Consultant: _____

TITLE	NAME	MAXIMUM HOURLY RATE (A)	MULTIPLIER (B)	MAXIMUM HOURLY BILLABLE RATE(C) =(A) X (B)
<u>6.EXPEDITING</u>				
OTHER OPTIONAL SERVICES:				
<u>1.STRUCTURAL ENGINEERING</u>				
<u>2.FIRE ALARM</u>				
<u>3.CIVIL ENGINEERING</u>				
<u>4.COST ESTIMATING</u>				
<u>5.FIRE PROTECTION</u>				
<u>6.AV/IT / SECURITY DESIGN</u>				

Consultant Contract Number _____
 Consultant: _____

TITLE	NAME	MAXIMUM HOURLY RATE (A)	MULTIPLIER (B)	MAXIMUM HOURLY BILLABLE RATE(C)=(A) X (B)
<u>7.FURNITURE SELECTION</u>				

The frequency of payments made to the Consultant shall be no more frequent than monthly. For payments based on hourly rates, the payment shall be for the hours performed during such period for the Portion of Services provided multiplied by the applicable Maximum Hourly Billable Rate. For payments based on Tasks completed, the equal to the percentage of completion of each Portion of the Services, multiple by the Maximum Payment for each Portion performed during the billing period, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs incurred and determined as such in accordance with Section 1.5.2 of the Contract.

With respect to payments based on hourly rates set forth above, the Consultant shall submit to the President, not more than once per calendar month, a Requisition setting forth in detail, for the period for which partial payment is requested (i) the Portion of the Services performed by Consultant’s Principal and by its professional and technical staff; (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period (iii) Allowable Additional Costs incurred; (iv) and the amount of partial payment requested. No multiplier overhead, administrative fee or other markup will be paid to Consultant for Subcontractors’ Costs or Allowable Additional Costs. In no event will be the amount paid under the Contract exceed the Maximum Contract Price or the Maximum Annual Payment.

With respect to payments based on Tasks completed, the Consultant shall submit to the President, not more than once per calendar month, a Requisition setting

Consultant Contract Number _____
 Consultant: _____

forth in detail, for the period for which partial payment is requested, the following: (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period; (ii) Allowable Additional Costs incurred during the billing period; and (iii) the amount of partial payment requested. In no event will be the amount paid under the Contract exceed the Maximum Contract Price or the Maximum Annual Payment.

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

APPENDIX D

INTENTIONALLY DELETED

Consultant Contract Number _____
Consultant: _____

APPENDIX E

INSURANCE REQUIREMENTS

The following is minimum acceptable insurance coverage requirements for Contracting Services

I. Insurance Requirements

- A. Commercial General Liability Policy issued on an Occurrence form with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Coverage shall include endorsements for: Products/Completed Operations; Underground Hazards where applicable; Contractual Liability for tort liability assumed under contract, Personal Injury; Waiver of Subrogation; Policy Aggregate shall apply on per project basis; Mobile Equipment if such equipment not subject to any motor vehicle statutory law.

Additional Insured endorsement as per Insurance Services Organization (a/k/a ISO) form CG 20 10 07 04 Additional Insured Scheduled Organization and form CG 20 37 07 04 Additional Insured – Completed Operations. Such endorsement shall include BNYDC and any other designated party as Additional Insured, as required by written contract to which this Exhibit is attached and part of.

There shall be no coverage restrictions or coverage exclusions on the General Liability Policy pertaining to, but not limited to: gravity related injuries, unsafe workplace, injuries sustained by employee of Contractor or sub-contractor, Third Party over type actions, construction operations, and construction activity.

The insurance procured by the Contractor shall be primary and non-contributory to any other insurance that may be in effect.

- B. Statutory Workers Compensation Policy and Employer’s Liability Policy of \$1,000,000 for work operations in State where project work is performed, including any applicable other states coverage endorsement.
- C. Automobile Liability Insurance Policy for Bodily Injury and Property Damage in the amount of \$1,000,000 per occurrence covering all owned, non-owned, hired, borrowed vehicles subject to statutory motor vehicle law.
- D. Contractors Pollution Liability policy of at least \$1,000,000 for damages arising out of bodily injury, property damages, environmental damages caused by a pollution incident from Contractors work, completed operations, or transportation whether work performed by or on behalf of Contractor.
- E. Umbrella/Excess Liability Policy of at least \$5,000,000 per occurrence. Umbrella Liability policy is to be provided on at least a follow form basis of the underlying

General Liability Insurance policy, Automobile Insurance Policy, and Workers' Compensation Insurance policy. The insurance procured by the Contractor shall be primary and non-contributory to any other insurance that may be in effect.

- F. Professional Liability (Errors and Omissions) of at least \$1,000,000 each claim for wrongful acts while performing and/or providing professional services. Coverage shall continue for at least three (3) years beyond the final performance of services.
- G. The following are to be included as additional insured(s) for coverage required in sections A,C,D and E. Each additional listed below shall be issued a separate Certificate of Insurance.

Certificate Holder

Brooklyn Navy Yard Development Corporation
Building 77
141 Flushing Avenue, Suite 801
Brooklyn, New York 11205

And as Additional Insureds
Brooklyn Navy Yard Development Corporation
City of New York

Certificate Holder

City of New York
c/o City of New York Department of Small Business Services
110 William Street
New York, NY 10038

And as Additional Insureds
City of New York
Brooklyn Navy Yard Development Corporation

- H. A Certificate of insurance using the ACCORD 25 form is to be provided to the Additional Insured and the Certificate must specifically include a copy of the stipulated additional insured endorsement as required in Section A. Certificate Holder must be notified of any cancellation, non-renewal or material modification of existing policy. Notice is to be received 30 days prior to any change in status. In addition to ACCORD 25 form, a completed New York Construction Certificate of Liability Insurance Addendum (ACCORD 855 form) shall be provided.

- II. If the Contractor utilizes the services of subcontractor for work performed, the same provisions of this Insurance Requirement Exhibit shall be required of those parties. It is the sole responsibility of the Contractor to maintain compliance of such.
- III. Insurance coverage shall be maintained with responsible insurance companies licensed and admitted to do business in the State of New York and such companies shall have an A.M.Best Rating of A- VII. If a Non-Admitted Insurance Company is used, an AM Best rating of A- shall apply.
- IV. Any self-insured insurance retentions and, or any deductibles utilized on any of the above required insurance coverage is the sole responsibility of the Contractor, and Contractor agrees to satisfy those retention and or deductible obligations directly with their insurance company.
- V. The policies required hereunder shall contain the following provisions:

“A. Notices from the insurer (the “Insurer”) to BNYDC (“BNYDC”) and the City of New York (the “City”), in connection with this policy, shall be addressed to the General Counsel, BNYDC, at Building 77, 141 Flushing Avenue, Suite 801, Brooklyn, New York 11205 (with a copy to BNYDC’s Deputy General Counsel at the same address);

B. The Insurer shall accept notice of accident from BNYDC or the City, within 120 days after receipt by an official of such Additional Insured (as identified above) of notice of such accident as valid and timely notice under this policy;

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

The Insurer understands and agrees that notice of accident or claim to such Insurer by any one of the following entities shall be deemed notice by all under the policy:

- Contractor; or
- BNYDC; or
- The City; or
- Any other Additional Insured.

E. This policy shall not be canceled, terminated or modified by the Insurer or Contractor unless 30 days prior written notice is sent by registered mail to BNYDC or the City, nor shall this policy be canceled, terminated or modified by the Contractor without prior written consent of BNYDC;

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

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

H. Insurance, if any, carried by BNYDC, 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 (1980) 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:

- (1) it will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation 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) when it subcontracts it will not engage in any unlawful discrimination in the selection of subcontractors on the basis of the race, color, creed, national origin, sex, age, disability, marital status or sexual orientation of the owner, manager or any officer, President, agent or employee of such subcontractors.
- (3) it will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) it will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and
- (5) it will furnish all information and reports including an Employment Report before the award of the contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Division of Labor Services of DSBS (the “Division”), and will permit access to its books, records

Consultant Contract Number _____
Consultant: _____

and accounts by the Division for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of the contract and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Division, the President may direct the imposition upon the Contractor 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 President may impose an employment program.

The President of the Division may recommend to the contracting agency head that a Board of Responsibility be convened for purposes of declaring a contractor who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be nonresponsible.

The contractor agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Division 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 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

APPENDIX G

E.O. 50 EMPLOYMENT REPORT FORM

Consultant Contract Number _____
Consultant: _____

APPENDIX H

E.O. 50 PAYROLL REPORT FORM AND INSTRUCTIONS

Consultant Contract Number _____
Consultant: _____



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

PAYROLL REPORT
(TO BE SUBMITTED WITH REQUISITION FOR PAYMENT)

Agency

NAME OF CONTRACTOR/SUBCONTRACTOR _____ ADDRESS _____
 CONTRACT REQ. NO. _____ JOB CODE _____ WEEK ENDING DATE: _____

PROJECT NAME & LOCATION _____

PHONE No. _____ PAYROLL No. _____
 TAX ID No. _____

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	SUPPLEMENTAL BENEFITS		(11)	(12)	(13)
								(9)	(10)			
NAME, ADDRESS, SOCIAL SECURITY No.	LIST TRADE & GIGS CLASSIFICATION (JOURNEYPERSON APPRENTICE LEARNER)	T M F E	DAY AND DATE	TOTAL HOURS	BASE RATE OF PAY PER HOUR	TOTAL BASE PAY	RATE PER HOUR	PAID TO Local # If Union is Checked	TOTAL PAID	GROSS PAY	TOTAL TAX & OTHER DEDUCTIONS	NET PAY
J A H		RT						U Local No.				
J A H		OT						O				
J A H		RT						U Local No.				
J A H		OT						O				
J A H		RT						U Local No.				
J A H		OT						O				
J A H		RT						U Local No.				
J A H		OT						O				
J A H		RT						U Local No.				
J A H		OT						O				

(INSTRUCTIONS ON REVERSE SIDE)
 I hereby certify that the above information represents wages and supplemental benefits is paid to all persons employed by my firm for construction work upon the above project during the period shown.
 I understand that the Agency relies upon the information as being complete and accurate in making payments to the undersigned.

FALSIFICATION OF STATEMENT IS A PUNISHABLE OFFENSE

SIGNATURE _____ NAME (Print) _____ TITLE _____ DATE _____

Consultant Contract Number _____
 Consultant: _____

INSTRUCTIONS FOR PREPARING AND SUBMITTAL OF A PAYROLL REPORT

1. All persons who perform any on-site construction activity, during the period of requisition, shall be listed on the Payroll Report.
2. Separate Payroll Reports shall be submitted by the prime contractor and each sub-contractor who performs any on-site construction activity during the period of the requisition.
3. Failure to provide the required Payroll Report may result in the requisition for payment being returned unpaid or the payment reduced.
4. **PAYROLL REPORT HEADING:** The spaces between the first set of double lines shall be referred to as the Payroll Report Heading and shall require the following information:
 - NAME OF CONTRACTOR / SUB-CONTRACTOR:** Circle either the word CONTRACTOR or SUB-CONTRACTOR as applicable. The legal name of the firm submitting the Payroll Report shall be placed immediately below this designation.
 - ADDRESS:** Insert the current address (i.e. Street, City, State & Zip Code) of the firm submitting the Payroll Report.
 - PHONE No.:** Enter the telephone number of the firm in the space provided.
 - PAYROLL No.:** In the space provided, enter the Payroll Number of the Contractor or Sub-Contractor.
 - CONTRACT REG. No.:** Enter the Contract Registration Number here. This may be obtained from the "Notice of Award" and / or the "Order to Commence Work" letters.
 - JOB CODE:** In the space provided enter the Contractor's in-house labor distribution code or job number where applicable.
 - WEEK ENDING - DATE:** In the space provided enter the last date of the payweek (i.e. month, day, year).
 - PROJECT NAME & LOCATION:** In this space enter the Project Name & Location where contract work is being performed.
 - TAX I.D. No.:** Enter in this space the Federal Tax Identification Number of the Contractor or Sub-Contractor as applicable.

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

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

SUPPLEMENTAL BENEFITS:

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

Consultant Contract Number _____
 Consultant: _____

APPENDIX I

INTENTIONALLY DELETED

APPENDIX J

INTENTIONALLY DELETED

Consultant Contract Number _____
Consultant: _____

APPENDIX K

INTENTIONALLY DELETED

Consultant Contract Number _____
Consultant: _____

APPENDIX L

WHISTLEBLOWER PROTECTION EXPANSION ACT

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

Consultant Contract Number _____
Consultant: _____

(d) For the purposes of this rider, “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.

(e) This rider is applicable to all of Contractor’s subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

Consultant Contract Number _____
Consultant: _____

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



DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:

New York City Department of Investigation (DOI)
80 Maiden Lane, 17th floor
New York, New York 10038
Attention: COMPLAINT BUREAU

OR FILE A COMPLAINT ON-LINE AT:

www.nyc.gov/doi

All communications are confidential

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

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



← **Scan the QR Code at Left to File a Complaint**

Consultant Contract Number _____
Consultant: _____

APPENDIX M

PAID SICK LEAVE LAW

Introduction and General Provisions

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

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

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

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

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

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

Pursuant to the PSLL and the Rules:

Consultant Contract Number _____
Consultant: _____

Applicability, Accrual, and Use

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

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

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

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the

Consultant Contract Number _____
Consultant: _____

PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

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

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

Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

Consultant Contract Number _____
Consultant: _____

- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

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

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSSL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language.

Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

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

Records

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

Enforcement and Penalties

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

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

Consultant Contract Number _____
Consultant: _____

More Generous Policies and Other Legal Requirements

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

Consultant Contract Number _____
Consultant: _____



Brooklyn Navy Yard
Development Corporation
BrooklynNavyYard.org

Building 77
141 Flushing Avenue, Suite 801
Brooklyn, NY 11205

EXHIBIT F
FEE PROPOSAL FORM

Complete and submit this form in a separate, sealed envelope in accordance with the requirements of the RFP. Please fill out all requested information.

Exhibit F Fee Proposal Form

6. EXPEDITING				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				
OTHER OPTIONAL SERVICES:				
1. STRUCTURAL ENGINEERING				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				
2. FIRE ALARM				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				
3. CIVIL ENGINEERING				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				
4. COST ESTIMATING				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				

5.FIRE PROTECTION				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				
6.AV/IT / SECURITY DESIGN				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				
7.FURNITURE SELECTION				
NAME OF FIRM:				
MBE CERTIFIED: <input type="checkbox"/> YES <input type="checkbox"/> NO				
WBE CERTIFIED <input type="checkbox"/> YES <input type="checkbox"/> NO				

Consultant shall be paid for each Portion of the Services at either (i) the respective amounts set forth in the above table for Task Orders requesting a cost proposal broken down on an hourly basis or, (ii) with respect to Services performed pursuant to a Task Order requesting a total lump sum cost proposal broken down by Task, as set forth in the Progress Schedule approved by BNYDC.

The frequency of payments made to the Consultant shall be no more frequent than monthly. For payments based on hourly rates, the payment shall be for the hours performed during such period for the Portion of Services provided multiplied by the applicable Maximum Hourly Billable Rate. For payments based on Tasks completed, the equal to the percentage of completion of each Portion of the Services, multiple by the Maximum Payment for each Portion performed during the billing period, less any Retainage. The Consultant shall also be reimbursed for Allowable Additional Costs incurred and determined as such in accordance with Section 1.5.2 of the Contract.

With respect to payments based on hourly rates set forth above, the Consultant shall submit to the President, not more than once per calendar month, a Requisition setting forth in detail, for the period for which partial payment is requested (i) the Portion of the Services performed by Consultant’s Principal and by its professional and technical staff; (ii) the number of hours worked by each such Principal and its professional and technical staff in connection with the Services performed during the billing period (iii) Allowable Additional Costs incurred; (iv) and the amount of partial payment requested. No

Exhibit F Fee Proposal Form

multiplier overhead, administrative fee or other markup will be paid to Consultant for Subcontractors' Costs or Allowable Additional Costs. In no event will be the amount paid under the Contract exceed the Maximum Contract Price or the Maximum Annual Payment.

With respect to payments based on Tasks completed, the Consultant shall submit to the President, not more than once per calendar month, a Requisition setting forth in detail, for the period for which partial payment is requested, the following: (i) the Percentage of Completion for each Portion of the Services performed by the Consultant during the billing period; (ii) Allowable Additional Costs incurred during the billing period; and (iii) the amount of partial payment requested. In no event will be the amount paid under the Contract exceed the Maximum Contract Price or the Maximum Annual Payment.

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

Authorized Signature Title,

Consultant Firm

Business Address

City

State

Telephone Number

Fax Number

Federal Tax Identification Number