

The City of New York
Department of Homeless Services
Office of Procurement



**REQUEST FOR PROPOSALS
FOR THE PROVISION OF FAMILY SHELTERS
FOR HOMELESS FAMILIES AT CITY-OWNED FACILITIES
JACKSON, BUSHWICK, & STOCKHOLM**

EPIN#: 07113P0001

RELEASE DATE: January 7, 2013

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AUTHORIZED AGENCY CONTACT PERSON

Proposers are advised that the Department's authorized contact person for all matters concerning this Request for Proposals is:

**Keli Mills
Contracting Officer
33 Beaver Street, Room 1316J
New York, NY 10004
kmills@dhs.nyc.gov
Telephone: (212) 607-6032
Fax: (917) 637-7678**



SECTION I – TIMETABLE

A. Release Date of the RFP: **January 7, 2013**

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

Telephone # (212) 607-6032
Fax # (917) 637-7678
E-Mail address kmills@dhs.nyc.gov

In the event Ms. Mills is not available please contact Kayona Wall at 212-361-8439 or kwall@dhs.nyc.gov.

B. Pre-Proposal Conference: (Attendance is optional but proposers are strongly encouraged to attend.)

Date: **January 16, 2013**
Time: **11:00 am**
Place: Department of Homeless Services, 33 Beaver Street
 17th Floor Conference Room, New York, NY 10004

C. Shelter Site Visit Schedule:

Friday, January 18, 2013 at 10:00 am

Jackson Family Residence – 691 East 138th Street, Bronx, NY 10457

The nearest form of public transportation is the #6 train to the Cypress Avenue station or the **BX17** or **BX33** bus to East 138th Street and Jackson Avenue.

Friday, January 18, 2013 at 1:30 pm

Bushwick Family Residence – 1675 Broadway, Brooklyn, NY 11207

The nearest form of public transportation is the **J** train to the Halsey Street Station or the **B20** bus to Schaefer Street and Broadway.

Friday, January 18, 2013 at 3:00 pm

Stockholm Family Residence – 99 Stockholm Street, Brooklyn, NY 11221

The nearest form of public transportation is the **J** train to the station to Kosciusko Street Station or the **B38-LTD** bus to De Kalb Avenue and Myrtle Avenue or the **B60** bus to Wilson Avenue and Myrtle Avenue.

Attendance is optional but proposers are strongly encouraged to attend the site visit and the pre-proposal conference scheduled for these Tier II Family residences. The site visits will provide information on office layout, an understanding of the configuration of the facility and information on the building systems. The pre-proposal conference will address questions regarding the Request for Proposals. All attendees must provide appropriate identification to enter each Tier II residence.

D. Proposal Due Date, Time and Location:

Due Date: February 11, 2013
Time: 2:00 pm
Place: NYC Department of Homeless Services
 Office of the Agency Chief Contracting Officer
 33 Beaver Street, 13th Floor Bid Desk
 New York, NY 10004

Proposals shall be hand-delivered to Calvin Pitter no later than TBA on **TBA**. ***E-mailed or faxed proposals will not be accepted.***

Proposals received at this location after the proposal due date and time are late and will not be accepted by the agency, except as provided under New York City's Procurement Policy Board Rules.

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

E. Anticipated Contract Start Date: July 1, 2013.

SECTION II – SUMMARY OF THE REQUEST FOR PROPOSALS

A. Purpose of the RFP

The Department of Homeless Services (“DHS”, “Agency” or “Department”) is seeking appropriately qualified vendors to operate the Tier II city owned family residences described below in Section B – Site Profiles. Tier II residences, which are required to be operated in accordance with New York State Codes, Rules and Regulations, Title 18, Part 900 (18 NYCRR 900), provide temporary housing accommodations and social services to homeless families until permanent housing alternatives become available. In addition to locating permanent housing, the Tier II residence program stabilizes the family and promotes the move to independent living. Tier II residences must provide, at a minimum, social services, assistance in seeking permanent housing, assistance in seeking employment and linkages to child care, health care and recreation services. Services are provided on-site and/or through linkages with other community-based programs. A total of three awards will be made as a result of this solicitation.

There are three competition pools consisting of separate proposals for the Jackson Family Residence, Stockholm Family Residence, and Bushwick Family Residence

B. Site Profiles

Jackson Family Residence – 691 East 138th Street, Bronx NY 10457

The Jackson Family Residence is a shelter for homeless families, located in Community District 1 in the Bronx. The nearest form of public transportation is the #6 train to the Cypress Avenue station or the **BX17** or **BX33** bus to East 138th Street and Jackson Avenue.

The Jackson Family Residence is a three-story walk up facility containing **95** furnished apartments consisting of 66 studios and 29 two-bedroom apartments.

Additionally, the site provides space for a security station, administrative offices, recreation room, storage room, and a break room.

Bushwick Family Residence – 1675 Broadway, Brooklyn, NY 11207

The Bushwick Family Residence is a shelter for homeless families, located in Community District 4 in Brooklyn. The nearest form of public transportation is the **J** train to the Halsey Street Station or the **B20** bus to Schaefer Street and Broadway.

The Bushwick Family Residence is a three-story walk up facility containing **87** furnished apartments consisting of 58 one-bedroom apartments and 29 two-bedroom apartments.

Additionally, the site provides a reception area / security station, visitor’s lounge, administrative offices, recreation room, childcare room, storage room, conference room and break room.

Stockholm Family Residence 99 Stockholm Street Brooklyn, NY 11221

The Stockholm Family Residence is a shelter for homeless families, located in Community District 4 in Brooklyn. The nearest form of public transportation is the **J** train to the station to Kosciusko Street Station or the **B38-LTD** bus to De Kalb Avenue and Myrtle Avenue or the **B60** bus to Wilson Avenue and Myrtle Avenue.

The Stockholm Family Residence is a four-story walk up facility containing 26 furnished apartments consisting of 11 one-bedroom apartments, 12 two-bedroom apartments and 3 three-bedroom apartments.

Additionally, the site provides a reception area / security station, administrative offices, recreation room, storage room, laundry room, conference room and break room.

C. Number of Proposal Submissions

A proposer may propose to provide more than one Tier II, **however, a separate and complete proposal package must be submitted for Jackson Family Residence, Stockholm Family Residence, and Bushwick Family Residence.** Where a proposer is eligible for awards to operate more than one Tier II, DHS reserves the right to determine, based on the proposer's demonstrated capability to successfully provide program services and in the best interests of the City, respectively, how many and for which option(s) the proposer(s) will be awarded a contract.

D. Anticipated Contract Term

It is anticipated that the term of the contracts awarded from this RFP will be for five years from July 1, 2013 to June 30, 2018. The contracts may additionally include a four-year option to renew. The agency reserves the right, prior to contract award to determine the length of the contract term and each option to renew, if any.

E. Anticipated Maximum Available Annual Funding

The anticipated total maximum annual available funding is **\$25,930,110**. **DHS has determined the not-to-exceed per diem rates per family per day are as follows:**

- **Jackson is \$71.45;**
- **Bushwick is \$69.14;**
- **Stockholm is \$87.42,**

Greater consideration will be given to proposers that propose more competitive prices in combination with a high quality program.

F. Anticipated Payment Structure

It is anticipated that the payment structure of the contracts awarded from this RFP will be based on a combination of line-item budget reimbursement and performance outcome measures and related financial incentives and/or disincentives (see Budget Summary Attachment B). The provider will participate in a Performance Investment Program designed to reward those providers who demonstrate excellence in helping move families to permanency as quickly as possible.

G. Minimum Qualification Requirement

The following is the minimum qualification requirement of the RFP. Proposals that fail to meet this requirement will be determined by the agency to be nonresponsive and will not be further considered.

- All proposers must submit prior written notification to the Community Board (Chair and District Manager) of intent to submit a proposal to DHS to operate a homeless shelter site. A signed copy of the letter on official organization letterhead and proof that the letter was received by the Community Board must accompany the proposal submitted to DHS. Proof of receipt must include one or more of the following: Fax Receipt with date, time and fax number; U.S. Postal Service Certified Mail Receipt; or other courier/delivery service with signature required receipt indicating date, time and signature.

Include an introductory paragraph stating that you, the proposer, have submitted a proposal to DHS to operate a family shelter and the location. Include either a request to meet with the Community Board to discuss the proposed program or a summary of the presentation meeting that took place with the Community Board. Also, include some background information about your qualifications as a social services provider.

H. General Procurement Information

The Department reserves the right, prior to contract registration and during the term of the contract, to change the program service size, program type, model and/or gender of its population depending on the needs of the system.

SECTION III – SCOPE OF SERVICES

A. Agency Program Goals and Objectives

The goals and objectives of Family shelters are to provide transitional housing for families without other housing options, as well as services that help secure viable, housing in the community and maintain independent living arrangements. Family shelters shall provide structure and atmosphere which facilitates assessment of the families' needs, the provision of case management and other social services, referrals to appropriate community-based services and assistance in securing alternative housing. All programs and services shall be geared to achieving the quickest possible placement back to the community.

B. Agency Assumptions Regarding Contractor Approach

The contractor and/or sub-contractors, if any, would have at least three years of successful demonstrated experience, within the past six years, in the operation of homeless and low income housing programs and/or the provision of other social services.

- Personnel would have the appropriate qualifications to effectively provide the requisite services.
- The contractor would employ adequate staffing to ensure operational success.
- All staff members would have the appropriate experience for providing the proposed services; and also have opportunities for ongoing professional development and training.
- The contractor would hire staff that is culturally sensitive to the clients being served.
- The contractor would be fiscally sound and capable of managing the proposed programs.
- The contractor would engage in successful joint efforts with other organizations providing services to the target population.
- The contractor would have the capacity to integrate the proposed program into its overall operation.
- The contractor internal monitoring system would be effectively used to identify program, personnel and fiscal issues and provide corrective action procedures.
- The contractor would have the capacity to maintain staffing levels at agreed upon qualifications.
- The contractor would have the capacity to maintain the building in accordance with "Building Management" as described in Section III "D page 10".

C. Agency Assumptions Regarding Program Approach

The agency's assumptions of a program approach that will successfully achieve the goals and objectives set out above are:

Intake/Orientation

- The contractor would accept only families referred to the respective residence by DHS; all DHS-referred families would be accepted into the residences on a 24 hour, seven day a week basis.
- The contractor would interview incoming families within 48 hours and then within 10 days of assessment, develop preliminary needs to establish eligibility for entitlements, health needs, educational needs, childcare needs and other appropriate services to stabilize the family. This interview would also serve to establish an exit strategy and target exit date for the family.
- The contractor would conduct an assessment and complete an Independent Living Plan (ILP) within ten calendar days of a family's admission to the respective residence. This assessment of client needs, which would include a mutually agreed upon written service plan designed to help the family obtain non-transitional housing. The ILP would lay out a plan that assists the family in obtaining the skills to enhance their ability to live independently. The ILP would set as a goal then the Families move back to the

community. The service plan would prioritize the individualized goals with projected time frames for completion. The contractor would be required to perform bi-weekly updates and ongoing follow up to the ILP. For Next Step facilities, ILP should be updated weekly.

- The contractor would orient new residents to the facility, which includes: (a) explaining facility rules; (b) providing new residents with a list of rights and responsibilities, grievance complaint procedures and housekeeping items; and (c) assigning them to a specified residential unit.
- The contractor would provide each adult with a thorough explanation of the DHS “Client Responsibility” requirement, and the Client Code of Conduct (CCC). The signing of the Client Code of Conduct for all adult family members will initiate the client’s understanding of this process.

Public Assistance

The contractor will ensure that all family members apply for all benefits that they may be eligible for, including public assistance, and use their benefits to assist in securing permanent housing. The contractor must ensure that all eligible families apply for public assistance, produce all documents necessary for establishing and maintaining public assistance eligibility, satisfy all requirements for participation in employment and training programs, accept jobs and work assignments, satisfy requirements for participation in rehabilitation services and participate in child support enforcement programs.

Client Responsibility

In the event that a family member(s) becomes non-compliant or commits acts of gross misconduct in shelter, the contractor will initiate the Client Responsibility Process which includes referring the family member(s) to the Next Step Shelters, recommending and issuing ‘Independent Living Plan Violations’ and ‘Notices to Discontinue Temporary Housing Assistance’.

Employment Assistance

The contractor would provide referral assistance in securing employment, job training and job placement services. The contractor would refer clients to job preparation and/or skills’ training programs through linkages with community-based programs as well as the broad array of HRA employment-related services.

Housing Placement Services

- Because shelter is temporary, the contractor would prepare an independent living plan designed to facilitate the return of the family back to the community.
- The contractor would advise about the family’s responsibility to seek and accept the first suitable housing option appropriate for the family’s situation.
- The contractor would ensure that each family is obtaining and completing appropriate housing applications and following up on housing appointments to families working
- The contractor would provide appropriate forms to document housing search efforts, and verify all housing rejections, including the reason for rejections.
- The contractor would provide ongoing housing education through workshops and/or counseling.
- The contractor would prepare families for housing interviews and accompany families on housing searches, when appropriate.

Case Management/Counseling/Referral

- The contractor would provide case management and identify appropriate services needed, including counseling services and other supportive services.
- The contractor would make appropriate referrals to outside agencies to ensure all the family’s identified service needs are met.
- The contractor will utilize the Client Responsibility process in order to foster compliance for all clients.

Case Record Maintenance/Protocol

- The contractor would use appropriate case record maintenance and recording protocols. The contractor would use any system, manual or automated, required by DHS to record client information. This includes forms developed by DHS for inclusion in the case record and the DHS Client Assistance and Re-housing Enterprise System (CARES).
- All case records should be available to DHS upon request.
- The contractor would gather client information in a format to be determined by DHS. Contractors will need standard computers and internet access, at a minimum, to collect and share data.
- DHS reserves the right to modify both the method of data collection, as well as, data elements collected.

Health Services

- The contractor would establish a relationship with a fully-accredited medical institution or clinic for referral of resident families for routine examinations and emergency treatment.
- The contractor would implement appropriate procedures for identifying communicable diseases and ensuring that its treatment, as well as on-site screening would be in place for early childhood impairments..
- The contractor would ensure that at least one staff person, possessing basic first-aid training, would be on duty at all times. As part of the initial assessment, the contractor would evaluate residents' health, mental health and substance abuse status, and make necessary referrals to appropriate services.

Education

The contractor would ensure that all school-age children are expected to be registered, and their attendance is monitored. At the parent's discretion, school-age children may continue at the schools they attended prior to their arrival at the residence.

Recreation and Child Care Services

The contractor would make recreation and child care services available either on-site or through off- site referrals for all residents. The contractor would make available recreation activities to all children residing in the respective residence.

Security/Supervision

- The contractor would provide sufficient and appropriate security services to insure the safety of the residents. Security guards at the residence would at all times conduct themselves in a professional manner. The residence requires 24-hour supervision, seven days a week, pursuant to State regulations. A uniformed agency, non-uniformed monitors, and/or surveillance measures are permitted to fulfill this requirement.
- The contractor would ensure that security guards hired are licensed by the State of New York and perform necessary background checks.
- The contractor would implement appropriate fire safety measures, including fire safety training for staff and residents. A curfew would be enforced and access to the residence would be controlled.
- The contractor would ensure that supervision of the residence included recording a daily census, admissions, discharges, and names of school age residents and their respective schools, and other reporting that may be required by federal, State or City regulations.
- The contractor would document residents' emergencies, illness and infractions of rules.

Building Management

- The contractor will complete weekly/bi-weekly unit inspections in order to ensure the health and safety of families in the facility.
- The contractor would maintain all areas of the residence in sanitary and safe condition and perform daily preventive, corrective and emergency maintenance and repair of the facility, including all mechanical systems, i.e., HVAC boiler, hot water, emergency generator, elevator, and fire safety.
- The contractor would maintain the interior and exterior building components, including general plumbing, carpentry, electrical, window screens, window glass, non-capital masonry, tile repair, door alarms, locks, grounds, equipment, and furnishings.
- The contractor would undertake all repairs, major or minor, that are the result of the contractor's negligence or are the result of vandalism by the contractor's staff or clients. The contractor would only be responsible for repairs necessitated by client vandalism to the extent funds are available in its budget for this purpose and the vandalism was the result of the contractor's negligent supervision of the clients.
- The contractor would maintain the building in compliance with all applicable Federal, State and City Laws and regulations governing the operation of the building. The contractor would comply with the Department's violation protocol. The contractor would incur all non-capital violations and deficiencies issued against the property. The contractor would immediately notify the Department if any violations were issued against the facility.
- The contractor would hire a qualified superintendent for the facility who has a satisfactory knowledge of building maintenance, and whose credentials would be presented to the Department for review. The Department shall notify the contractor if the proposed employee is acceptable within two (2) weeks of the submission. In the event the Department does not notify the contractor within a two (2) week period that the proposed employee is not acceptable, the employee shall be deemed approved by the Department. The Department reserves the right to approve the contractor's employees that are engaged in the maintenance of the facility.
- The contractor would hire qualified duly licensed individuals to perform specialized maintenance work wherein the trade or legal requirements mandate licensing or certification to do such work.
- The contractor would implement a Property Management Plan as approved by DHS.
- The contractor would handle emergency repairs and provide preventive maintenance on a schedule approved by DHS.
- The Department's representatives shall be entitled to enter upon the Facility for consultation and to do those things necessary to provide advice for the Contractor's consideration, observe all work being performed and to generally represent the Department and the City of New York.
- The Department would only be responsible for major structural repairs to city-owned facility and capital improvements to the major building systems including HVAC, boilers, plumbing systems, electrical systems, elevators, roofing and exterior portions of the facility. See Attachment E, Standard Human Service Contract, Appendix A., General Provisions, Article 4., Labor Provisions, Section 4.04, Minimum Wage.

Community Support and Relations

- The contractor would develop a "good neighbor plan" for the residence. The plan would address how quality of life issues in the immediate area, such as security, loitering and sanitation, will be handled and how the residence can be used as a community resource.
- The contractor would establish a community advisory board or other community forum consisting of residence staff, residents, and representatives from the community.
- Representatives of the Family Shelters comprised of the Director or his/her designee, may be required to attend regular Community Board meetings when requested.

Reporting Requirements

The contractor would submit weekly/monthly status reports, statistical information as needed, DHS Incident Reports, Sanction Recommendations, Annual Budget Reviews, Monthly Expenditure Reports, expense reports, and yearly Close-Out statements. Failure to submit required documentation in a timely manner could result in a less than satisfactory performance evaluation.

Compliance with Local Law 34 of 2007

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this *[proposal]* *[submission]*, and should do so in a separate envelope. (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]* *[submission]* 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.

SECTION IV – FORMAT AND CONTENT OF PROPOSAL

Proposal Submission Instructions: All proposals must meet the requirements listed below. The proposal should be typed double-spaced on both sides of 8 ½” X 11” paper. Pages should be paginated. The proposal would be evaluated on the basis of its content, not length. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). The proposer should state on Attachment A whether its response is printed on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in these instructions. Failure to comply with any of the instructions set forth in this paragraph will not be considered non-responsive.

A. Proposal Format

1. Proposal Cover Letter

The Proposal Cover Letter form (Attachment A) transmits the proposer’s Proposal Package to the agency. It should be completed, signed and dated by an authorized representative of the proposer. If the proposer is applying for more than one Tier II shelter, they should submit a separate proposal for each Tier II shelter. Note: The Dean Street & MacDonough Tier II shelters should be submitted as one proposal.

2. Program Proposal

The Program Proposal is a clear, concise narrative, which addresses the following:

a. Experience and Qualifications

Describe the successful relevant experiences of the proposer, each proposed subcontractor, if any, and the proposed key staff that would provide the program described in Section III - Scope of Services of the RFP. Specifically address the following:

- Demonstrate that the proposer, and any subcontractor(s), has at least 3 years of experience in the last 6 years operating homeless and low income housing programs.
- Describe the proposer’s successful experience providing Transitional Housing Services – highlighting work with families, if applicable.
- Describe the proposer’s successful experience, including that of any subcontractor, providing integrated social services.
- Demonstrate that proposed staff would have the appropriate qualifications to effectively provide the requisite services to meet the needs of the target population.

In addition, attach:

- A list of at least three relevant references, including the name of the reference entity, a brief statement describing the relationship between the proposer or proposed subcontractor(s), as applicable, and the reference entity, and the name, title and telephone number of a contact person at the reference entity for the proposer and each proposed subcontractor, if any.
- Past performance evaluations of the proposer conducted by an outside organization and/or fiscal auditor, within the last two years, of similar programs administered by the proposer.

- A resume and/or description of the qualifications of proposed program staff. If resumes are not available, include the intended job descriptions with qualification requirements.

b. Organizational Capability

Demonstrate the proposer's organizational (i.e., programmatic, technical, managerial and financial) capability to perform the services described in Section III – Scope of Services of the RFP. Specifically address the following:

- Describe other programs or services that the proposer's organization operates and demonstrate how they will be used to enhance the effectiveness of the proposed program.
- Describe the proposer's current organizational capacity and illustrate how the proposed Tier II facility will successfully fit into that structure.
- Describe how the proposer's organization structure will support the proposed program's success.
- Specify administrative, managerial and clerical positions and indicate whether staff members work full-time or part-time.
- Provide a time frame in weeks to accomplish the tasks consistent with the projected start date, July 1, 2013 and demonstrate the proposer's capability to successfully meet that schedule.
- Describe and demonstrate the effectiveness of the proposer's mechanisms for providing ongoing and consistent staff supervision, ensuring adequate staff coverage, (provide staffing schedule including back-up staff, and justifications for each position), procedures for evaluating staff performance and protocols for employee discipline and termination.
- Describe the proposer's internal monitoring system and demonstrate how it will effectively identify facility, program and fiscal problems. Include in discussion case record maintenance and recording protocols.
- Describe procedures to develop and implement corrective action plans and indicate time frames for resolution and the respective roles of the Board of Directors and executive/ management staff in the monitoring process.

In addition, attach:

- A copy of the proposer's latest audit report or certified financial statement prepared within the last two years or a statement as to why no audit or statement is available.
- Indicate title(s) and provide resumes of the staff that would be responsible for financial transactions, financial reporting, financial records maintenance and audit resolution.
- State whether or not the proposer has submitted a proposal to operate more than one (1) site residence. If so, indicate how many and demonstrate the proposer's capability to successfully operate multiple site facilities.
- Provide an organization chart specifically for the proposed program, indicating lines of supervision.

c. Program Approach

Describe in detail how the proposer will provide the work described in Section III – Scope of Services of this RFP and demonstrate that the proposer's proposed approach will fulfill the Agency's goals and objectives. In addition, specifically address the following:

- Describe the proposed intake/orientation plan and demonstrate how intake/assessment will successfully orientate the client to goals toward permanency.
- Describe and demonstrate the effectiveness of the proposer's approach to provide housing placement and employment assistance.
- Describe and demonstrate how the proposer would successfully manage DHS referrals.

- Describe and demonstrate the extent to which and how the proposer will effectively use the public and private resources available to the community in order to enhance the effectiveness of the proposer's service.
- Describe and justify the provision of services at off-site locations. Attach letters of commitment from other organizations for planned service linkages with the proposer.
- Describe and demonstrate the strength and effectiveness of established linkages. Attach copies of all relevant linkage agreements, letters of intent or other means chosen by the proposer. Each linkage agreement should include a detailed description of the service agency, what services the linkage will provide, on the linkage's letterhead and signed by the agency's executive director. Broadly worded referral agreement letters or letters of support will not be sufficient.

The program approach in this RFP represents what DHS believes to be the best program approach. However, proposers are encouraged to propose alternate program approaches that they believe will best fulfill DHS' program goals and objectives. Proposers may also propose more than one approach. However, if an alternative approach affects other areas of the proposal such as experience, organizational capability or price, that alternative approach should be submitted as a complete and separate proposal, providing all the information specified in Section IV – Format and Content of the Proposals of this RFP.

3. Price Proposal

The agency reserves the right to select any payment structure that is in the City's best interest. For the purposes of comparison, proposers should submit a Price Proposal that meets the standards of Sections IV(3)(a) and IV(3)(b), below. *Please note that the maximum administrative overhead rate is 8.5 percent and the maximum fringe benefit rate is 26 percent.*

a. Total Offering Price

The Price Proposal is a presentation of the proposer's total offering price for providing the Scope of Services described in Section III of this RFP. The Price Proposal should include:

- A Budget Summary (see Attachment B).
- A complete line item budget for the proposed program except as noted below. The budget should reflect completeness, fiscal soundness, adequacy and cost effectiveness and should include the following:
 - All subcontracted amounts, if applicable. *Note: Any administrative overhead included in a subcontract budget is the responsibility of the primary contractor.*
 - Any in-kind contributions or other sources of funding. The proposer is encouraged, but not required to identify other sources of funding that could be used to leverage additional services, as well as any in-kind contributions.
- A budget narrative discussing how the budget would support the proposal, including the identification and justification of all personnel and Other than Personal Services (OTPS) expenses presented in a line item format, including administrative costs, fringe benefits, and start-up costs.
- Staffing model with estimates by Full Time Equivalent (FTE) for all agency employees in administration, social services and support to cover the required hours of operation in the budget for Personal Services. Indicate the total number, qualifications, job descriptions and titles of all personnel to be employed by the proposer under the proposed contract, as well as the nature and cost of salaries to be provided to such personnel.

b. Performance Outcome Measures and Related Financial Incentives and/or Disincentives

The Agency’s assumptions regarding which performance outcome measures and related financial incentives and/or disincentives will best assure that the selected proposer(s) will perform the work under the contract(s) awarded from this RFP in a manner that is cost-effective for the Agency and most likely achieve the Agency’s goals and objectives. Specific performance outcome measures may be determined during negotiations of the contract or amended during the term of the contract.

4. Acknowledgment of Addenda

The Acknowledgment of Addenda form (Attachment C) serves as the proposer’s acknowledgment of the receipt of addenda to this RFP which may have been issued by the agency prior to the Proposal Due Date and Time. The proposer should complete this form as instructed on the form.

5. Doing Business Data Form

Please fill out and submit the Doing Business Data Form (Attachment D) and submit it along with your proposal in a separate envelope. This completed form is required for a proposal to be considered responsive or for any entity to receive an award or to enter into an agreement.

B. Proposal Package Content (“Checklist”)

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

1. A sealed inner envelope labeled “Program Proposal” containing one (1) original set and four (4) duplicate sets of the documents listed below in the following order:
 - Proposal Cover Letter Form (Attachment A)
Proof of tax exempt status and/or proof of incorporation and append documentation to Attachment A
 - Complete Program Proposal must be submitted on **CD in PDF Format**

Written notification to the Community Board (Chair and District Manager) of intent to submit a proposal **(Proposal will be found non-responsive and will not be further considered if this documentation is not included).**

- Program Proposal:
 - Narrative
 - Two recent references for the Proposer and, if applicable, each Subcontractor
 - Past Performance Evaluations of Similar Programs in the past three years
 - Resumes and/or Description of Qualifications for Key Staff Positions
 - Organizational Chart
 - Audit Report or Certified Financial Statement (No more than 2 years old.)
 - Letters of commitment/support from community-based organizations
 - Acknowledgment of Addenda Form (Attachment B)
- 2. A separate sealed inner envelope labeled “Price Proposal,” containing one (1) original set and four (4) duplicate sets of the “Price Proposal.”
 - Budget Summary (Attachment B)
 - Budget Narrative

3. Compliance with Local Law 34 of 2007/ Doing Business Data Form (Attachment D). One (1) original and one (1) duplicate set of the Doing Business Data Form should be placed in a sealed inner envelope.

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

SECTION V – PROPOSAL EVALUATION AND CONTRACT AWARD PROCEDURES

A. EVALUATION PROCEDURES

All proposals accepted by the agency will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Proposals that are determined by the agency to be non-responsive will be disqualified. The agency’s Evaluation Committee will evaluate and rate all remaining proposals based on the evaluation criteria prescribed below. Although discussions may be conducted with proposers who submit acceptable proposals, the agency reserves the right to award contracts without discussion on the basis of initial proposals received. Therefore, the proposer’s initial proposal should contain its best programmatic and price terms.

B. EVALUATION CRITERIA

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

C. BASIS FOR CONTRACT AWARD

DHS will award contracts to responsible proposers whose proposals are determined to be the most advantageous to the City, taking into consideration the price and such other factors or criteria set forth in this RFP. Proposals will be ranked in descending order of their overall average technical scores in each respective competition pool. Awards will be made to the highest rated vendors in each competition pool whose proposals are technically viable and whose maximum price per diem does not exceed the amount set forth in the RFP. DHS reserves the right to determine, based on the proposer’s demonstrated organizational capability and in the best interest of the city, how many shelter sites the proposer will be awarded. Thus, in the case that a proposer is eligible for award in more than one competition pool, DHS reserves the right based on the proposer’s demonstrated organizational capability and in the best interest of the city, for how many and which competition(s) the proposer will be awarded a contract(s).

Contract awards shall also be subject the timely completion of negotiations between DHS and the selected contractors.

SECTION VI – GENERAL INFORMATION TO PROPOSERS

- A. Complaints.** The New York City Comptroller is charged with the audit of contracts in New York City. Any proposer who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.
- B. Applicable Laws.** This Request for Proposals and the resulting contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.
- C. General Contract Provisions.** Contracts shall be subject to New York City's general contract provisions, in substantially the form that they appear in "Appendix A—General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.
- D. Contract Award.** Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.
- E. Proposer Appeal Rights.** Pursuant to New York City's Procurement Policy Board Rules, proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a contract.
- F. Multi-Year Contracts.** Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the Provider's performance is not satisfactory. The Agency will notify the Provider as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year contract for each succeeding City fiscal year. In the event of cancellation, the Provider will be reimbursed for those costs, if any, which are so provided for in the contract.
- G. Prompt Payment Policy.** Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process contract payments efficiently and expeditiously.
- H. Prices Irrevocable.** Prices proposed by the proposer shall be irrevocable until contract award, unless the proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to contract award but after the expiration of 90 days after the opening of proposals. This shall not limit the discretion of the Agency to request proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.
- I. Confidential, Proprietary Information or Trade Secrets.** Proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal. All information not so identified may be disclosed by the City.
- J. RFP Postponement/Cancellation.** The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all proposals.
- K. Proposer Costs.** Proposers will not be reimbursed for any costs incurred to prepare proposals.
- L. Vendex Fees.** Pursuant to PPB Rule 2-08(f)(2), the contractor will be charged a fee for the administration of the Vendex system, including the Vendor Name Check Process, if a Vendor Name Check review is required to be conducted by the Department of Investigation. The contractor shall also be required to pay the applicable fees for any of its subcontractors for which Vendor Name Check reviews are required. The fee(s) will be deducted from payments made to the contractor under the contract. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350. The estimated value for each contract resulting from this RFP is estimated to be (less than or equal to \$1million) (above \$1million).

M. Charter Section 312(a) Certification. [IF APPLICABLE] The Agency has determined that the contract(s) to be awarded through this RFP will not directly result in the displacement of any New York City employee.

<hr/> <p>Agency Chief Contracting Officer</p> <hr/> <p>Date</p>	<p><u>Message from the New York City Vendor Enrollment Center</u> Get on mailing lists for New York City contract opportunities! Submit a NYC FMS Vendor Application Call 212-857-1680</p>
---	--

ATTACHMENT A

PROPOSAL COVER LETTER

**REQUEST FOR PROPSALS
TO OPERATE TIER II RESIDENTIAL SHELTERS
FOR HOMELESS FAMILIES
EPIN # 07113P0001**

PROPOSER:

Name: _____

Address: _____

Tax Identification #: _____ **E-Mail Address** _____

Has the proposer verified 501(c)(3) tax exempt status and or proof of incorporation of the Internal Revenue Code?

Yes No

Is this response printed on both sides, on recycled paper containing the minimum percentage of covered fiber content as requested by the City in the instructions to this solicitation? Yes No

Site Facility Proposed: (Please Check One Box Only)

- Jackson
- Bushwick
- Stockholm

Is the proposer submitting for more than one (1) site? If so, list sites below.

*** NOTE: A separate, complete proposal must be submitted for each site facility.**

Proposer's Contact Person:

Name: _____

Title: _____

Telephone # [____]- _____

Proposer's Authorized Representative:

Name: _____

Title: _____

Signature: _____ **Date:** _____

ATTACHMENT B

**PROPOSED ANNUAL BUDGET SUMMARY
 EPIN # 07113P0001**

1. Personnel Services

TITLE	EXPENSE
Administration	
Social Service Staff	
(List titles (e.g. social worker) and for each indicate the proposed number and salaries)	
<i>PS Subtotal</i>	
<i>Fringe Benefits</i>	
<i>Total PS and Fringe</i>	

2. OTPS

ITEMS	EXPENSE
Program Supplies	
Staffing Training	
Telephone	
Equipment	
Lease Copier	
Building Maintenance	
Emergency Food	
Other (as applicable)	

*These are suggested Line Items

TOTAL OTPS

EXPENSE SUMMARY

Total PS
Total OTPS
Subtotal
Administrative Overhead

TOTAL OPERATING EXPENSE

Note: Administrative Overhead is limited to 8.5 percent and the maximum fringe benefit rate is 26 percent.

Note: The Per Diem rates are calculated as follows:

Total Annual Budget/# of Units/365 Days/ .95 occupancy rates applies to Jackson & Bushwick Residences.

Stockholm Residence Occupancy rate is .90

If in-kind contributions or other sources of funding are to be used to leverage additional or enhanced services, indicate the amount and sources of the funding.

ATTACHMENT C

ACKNOWLEDGMENT OF ADDENDA

**REQUEST FOR PROPOSALS
TO OPERATE TIER II RESIDENTIAL SHELTERS
FOR HOMELESS FAMILIES
EPIN # 07113P0001**

Complete Part I or Part II as applicable:

PART I

ADDENDUM #1, DATED _____

ADDENDUM #2, DATED _____

ADDENDUM #3, DATED _____

ADDENDUM #4, DATED _____

ADDENDUM #5, DATED _____

ADDENDUM #6, DATED _____

ADDENDUM #7, DATED _____

ADDENDUM #8, DATED _____

LIST FURTHER ADDENDA AND DATES RECEIVED:

PART II

_____ NO ADDENDUM WAS RECEIVED IN CONNECTION WITH THIS RFP

DATE ____/____/____

PROPOSER'S NAME _____

APPENDIX A

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

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APPENDIX A

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

ARTICLE 1 - DEFINITIONS

Section 1.01 Definitions

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

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

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

C. “City” shall mean The City of New York.

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

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

F. “Comptroller” shall mean the Comptroller of the City of New York.

G. “Contractor” shall mean the entity entering into this Agreement with the Department.

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

I. “Department” or “Agency” shall mean the City agency that has entered into this Agreement.

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

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

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

M. “State” shall mean the State of New York.

ARTICLE 2 - REPRESENTATIONS AND WARRANTIES

Section 2.01 Procurement of Agreement

A. The Contractor represents and warrants that no person or entity (other than an officer, partner, or employee working solely for the Contractor) has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other direct or indirect compensation. Notwithstanding the preceding sentence, the Contractor may retain consultants to draft proposals, negotiate contracts, and perform other similar services. The Contractor further represents and warrants that no payment, gift, or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. The Contractor makes such representations and warranties to induce the City to enter into this Agreement and the City relies upon such representations and warranties in the execution of this Agreement.

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

Section 2.02 Conflicts of Interest

A. The Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which conflicts in any manner or degree with the performance of this Agreement. The Contractor further represents and warrants that no person having such interest or possible interest shall be employed by or connected with the Contractor in the performance of this Agreement.

B. Consistent with Charter § 2604 and other related provisions of the Charter, the Admin. Code and the New York State Penal Law, no elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this Agreement which affects his or her personal

interest or the interest of any corporation, partnership or other entity in which he or she is, directly or indirectly, interested; nor shall any such official, officer, employee, or person have any interest in, or in the proceeds of, this Agreement. This Paragraph B shall not prevent directors, officers, members, partners, or employees of the Contractor from participating in decisions relating to this Agreement where their sole personal interest is in the Contractor.

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

[PARAGRAPHS D-H ARE APPLICABLE ONLY TO HUMAN OR CLIENT SERVICE CONTRACTS.]

D. Except as provided in Paragraph E below, the Contractor's employees and members of their immediate families, as defined in Paragraph F below, may not serve on the Board of Directors of the Contractor ("Board"), or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement.

E. If the Board has more than five (5) members, then Contractor's employees and members of their immediate families may serve on the Board, or any committee with authority to order personnel actions affecting his or her job, or which, either by rule or by practice, regularly nominates, recommends or screens candidates for employment in the program to be operated pursuant to this Agreement, provided that (i) Contractor's employees and members of their immediate families are prohibited from voting on any such personnel matters, including but not limited to any matters directly affecting their own salary or other compensation, and shall fully disclose all conflicts and potential conflicts to the Board, and (ii) Contractor's employees and members of their immediate families may not serve in the capacity either of Chairperson or Treasurer of the Board (or equivalent titles), nor constitute more than one-third of either the Board or any such committee.

F. Without the prior written consent of the Commissioner, no person may hold a job or position with the Contractor over which a member of his or her immediate family exercises any supervisory, managerial or other authority whatsoever whether such authority is reflected in a job title or otherwise, unless such job or position is wholly voluntary and unpaid. A member of an immediate family includes: husband, wife, domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, son, son-in-law, daughter, daughter-in-law, niece, nephew, aunt, uncle, first cousin, and separated spouse. Where a member of an immediate family has that status because of that person's relationship to a spouse (e.g., father-in-law), that status shall also apply to a relative of a domestic partner. For purposes of this Section, a member of the Board is deemed to exercise authority over all employees of the Contractor.

G. If the Contractor has contracts with the City that in the aggregate during any twelve-month period have a value of more than One Million Dollars (\$1,000,000) and such amount constitutes more than fifty percent (50%) of the Contractor's total revenues, then the Contractor must have a minimum of five (5) persons on its Board.

H. Paragraphs D-H of this Section 2.02 apply only if Contractor is a not-for-profit corporation.

Section 2.03 Fair Practices

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

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

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

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

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

Section 2.04 VENDEX

The Contractor represents and warrants that it and its principals have duly executed and filed all required VENDEX Questionnaires and, if applicable, Certificates of No Change, pursuant to PPB Rule § 2-08 and in accordance with the policies and procedures of the Mayor's Office of Contract Services. The Contractor understands that the Department's reliance upon the completeness and veracity of the information stated therein is a material condition to the execution of this Agreement, and represents and warrants that the information it and its principals have provided is accurate and complete.

Section 2.05 Political Activity

The Contractor's provision of services under this Agreement shall not include any partisan political activity or any activity to further the election or defeat of any candidate for

public, political, or party office, nor shall any of the funds provided under this Agreement be used for such purposes.

Section 2.06 Religious Activity

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

Section 2.07 Unlawful Discriminatory Practices: Admin. Code § 6-123

As required by Admin. Code § 6-123, the Contractor will not engage in any unlawful discriminatory practice as defined in and pursuant to the terms of Title 8 of the City Administrative Code. The Contractor shall include a provision in any agreement with a first-level subcontractor performing services under this Agreement for an amount in excess of Fifty Thousand Dollars (\$50,000) that such subcontractor shall not engage in any such unlawful discriminatory practice.

Section 2.08 Bankruptcy and Reorganization

In the event that the Contractor files for bankruptcy or reorganization under Chapter Seven or Chapter Eleven of the United States Bankruptcy Code, the Contractor shall disclose such action to the Department within seven (7) days of filing.

ARTICLE 3 - ASSIGNMENT AND SUBCONTRACTING

Section 3.01 Assignment

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

B. Before entering into any such assignment, transfer, conveyance or other disposal of this Agreement, the Contractor shall submit a written request for approval to the Department giving the name and address of the proposed assignee. The proposed assignee's VENDEX questionnaire must be submitted within thirty (30) Days after the ACCO has granted preliminary written approval of the proposed assignee, if required. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed assignee has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency

shall make a final determination in writing approving or disapproving the assignee after receiving all requested information.

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

D. The provisions of this Section shall not hinder, prevent, or affect an assignment by the Contractor for the benefit of its creditors made pursuant to the Laws of the State.

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

Section 3.02 Subcontracting

A. The Contractor shall not enter into any subcontract for an amount greater than Five Thousand Dollars (\$5,000) for the performance of its obligations, in whole or in part, under this Agreement without the prior approval by the Department of the subcontractor. The Department hereby grants approval for all subcontracts for an amount that does not exceed Five Thousand Dollars (\$5,000). The Contractor must submit monthly reports to the Department indicating all such subcontractors. All subcontracts must be in writing.

B. Prior to entering into any subcontract for an amount greater than Five Thousand Dollars (\$5,000), the Contractor shall submit a written request for the approval of the proposed subcontractor to the Department giving the name and address of the proposed subcontractor and the portion of the services that it is to perform and furnish. At the request of the Department, a copy of the proposed subcontract shall be submitted to the Department. The proposed subcontractor's VENDEX Questionnaire must be submitted, if required, within thirty (30) Days after the ACCO has granted preliminary approval of the proposed subcontractor. Upon the request of the Department, the Contractor shall provide any other information demonstrating that the proposed subcontractor has the necessary facilities, skill, integrity, past experience and financial resources to perform the specified services in accordance with the terms and conditions of this Agreement. The Agency shall make a final determination in writing approving or disapproving the subcontractor after receiving all requested information. For proposed subcontracts that do not exceed Twenty-five Thousand Dollars (\$25,000), the Department's approval shall be deemed granted if the Department does not issue a written approval or disapproval within forty-five (45) Days of the Department's receipt of the written request for approval or, if applicable, within forty-five (45) Days of the Department's acknowledged receipt of fully completed VENDEX Questionnaires for the subcontractor.

C. All subcontracts shall contain provisions specifying that:

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

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

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

4. The subcontractor specifically agrees to be bound by Section 4.07 and Article 5 of this Appendix A and specifically agrees that the City may enforce such provisions directly against the subcontractor as if the City were a party to the subcontract.

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

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

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

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

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

ARTICLE 4 - LABOR PROVISIONS

Section 4.01 Independent Contractor Status

The Contractor and the Department agree that the Contractor is an independent contractor and not an employee of the Department or the City. Accordingly, neither the Contractor nor its employees or agents will hold themselves out as, or claim to be, officers or employees of the

City, or of any department, agency or unit of the City, by reason of this Agreement, and they will not, by reason of this Agreement, make any claim, demand or application to or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit.

Section 4.02 Employees

All persons who are employed by the Contractor and all consultants or independent contractors who are retained by the Contractor to perform services under this Agreement are neither employees of the City nor under contract with the City. The Contractor, and not the City, is responsible for their work, direction, compensation, and personal conduct while engaged under this Agreement. Nothing in the Agreement shall impose any liability or duty on the City for the acts, omissions, liabilities or obligations of the Contractor, or any officer, employee, or agent of the Contractor, or for taxes of any nature, or for any right or benefit applicable to an officer or employee of the City, including, but not limited to, Workers' Compensation coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage or employee retirement membership or credit. Except as specifically stated in this Agreement, nothing in this Agreement shall impose any liability or duty on the City to any person or entity.

Section 4.03 Removal of Individuals Performing Work

The Contractor shall not have anyone perform work under this Agreement who is not competent, faithful and skilled in the work for which he or she shall be employed. Whenever the Commissioner shall inform the Contractor, in writing, that any individual is, in his or her opinion, incompetent, unfaithful, or unskilled, such individual shall no longer perform work under this Agreement. Prior to making a determination to direct a Contractor that an individual shall no longer perform work under this Agreement, the Commissioner shall provide the Contractor an opportunity to be heard on no less than five (5) Days' written notice. The Commissioner may direct the Contractor not to allow the individual from performing work under the Agreement pending the opportunity to be heard and the Commissioner's determination.

Section 4.04 Minimum Wage

Except for those employees whose minimum wage is required to be fixed pursuant to Sections 220 or 230 of the New York State Labor Law or by City Administrative Code § 6-109, all persons employed by the Contractor in the performance of this Agreement shall be paid, without subsequent deduction or rebate, unless expressly authorized by Law, not less than the minimum wage as prescribed by Law. Any breach of this Section shall be deemed a material breach of this Agreement.

Section 4.05 Non-Discrimination: New York State Labor Law § 220-e

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

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

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

3. There may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

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

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

Section 4.06 Non-Discrimination: Admin. Code § 6-108

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

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

B. It shall be unlawful for any person or any servant, agent or employee of any person, described in Paragraph A above, to ask, indicate or transmit, orally or in writing, directly

or indirectly, the race, color, creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

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

D. Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this Section shall, upon conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100) or by imprisonment for not more than thirty (30) Days, or both.

Section 4.07 Non-Discrimination: E.O. 50 -- Equal Employment Opportunity

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

1. Will not discriminate unlawfully against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation or citizenship status with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
2. Will not discriminate unlawfully in the selection of subcontractors on the basis of the owners', partners' or shareholders' race, color, creed, national origin, sex, age, disability, marital status, sexual orientation, or citizenship status;
3. Will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, color, creed, national origin, sex, age, disability, marital status, sexual orientation or citizenship status, and that it is an equal employment opportunity employer;
4. Will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder;
5. Will furnish before this Agreement is awarded all information and reports including an Employment Report which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the City Department of Small Business Services, Division of Labor Services ("DLS"); and

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

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

1. Disapproval of the Contractor; and/or
2. Suspension or termination of the Agreement; and/or
3. Declaring the Contractor in default; and/or
4. In lieu of any of the foregoing sanctions, imposition of an employment program.

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

D. The Contractor agrees to include the provisions of the foregoing Paragraphs in every subcontract or purchase order in excess of One Hundred Thousand Dollars (\$100,000) 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 Director of DLS as a means of enforcing such provisions including sanctions for noncompliance. A supplier of unfinished products to the Contractor needed to produce the item contracted for shall not be considered a subcontractor or vendor for purposes of this Paragraph.

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

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

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

Section 5.01 Books and Records

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

Section 5.02 Retention of Records

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

Section 5.03 Inspection

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

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

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

Section 5.04 Audit

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

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

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

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

Section 5.05 No Removal of Records from Premises

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

Section 5.06 Electronic Records

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

Section 5.07 Investigations Clause

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

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

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

C. 1. The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) Days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

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

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

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

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

E. The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

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

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

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

4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

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

2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

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

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

G. In addition to and notwithstanding any other provision of this Agreement, the Commissioner or Agency Head may in his or her sole discretion terminate this Agreement upon not less than three (3) Days written notice in the event the Contractor fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Contractor, or affecting the performance of this Agreement.

Section 5.08 Confidentiality

A. The Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the reports, information, or data, furnished to, or prepared, assembled or used by, the Contractor under this Agreement. The Contractor agrees that such reports, information, or data shall not be made available to any person or entity without the prior written approval of the Department. The Contractor agrees to maintain the confidentiality of such reports, information, or data by using a reasonable degree of care, and using at least the same degree of care that the Contractor uses to preserve the confidentiality of its own confidential information. In the event that the data contains social security numbers or other Personal Identifying Information, as such term is defined in Paragraph B of this Section, the Contractor shall utilize best practice methods (e.g., encryption of electronic records) to protect the confidentiality of such data. The obligation under this Section to hold reports, information or data confidential shall not apply where the City would be required to disclose such reports, information or data pursuant to the State Freedom of Information Law (“FOIL”), provided that the Contractor provides advance notice to the City, in writing or by e-mail, that it intends to disclose such reports, information or data and the City does not inform the contractor, in writing or by e-mail, that such reports, information, or data are not subject to disclosure under FOIL.

B. The Contractor shall provide notice to the Department within three (3) days of the discovery by the Contractor of any breach of security, as defined in Admin. Code § 10-501(b), of any data, encrypted or otherwise, in use by the Contractor that contains social security numbers or other personal identifying information as defined in Admin. Code § 10-501 (“Personal Identifying Information”), where such breach of security arises out of the acts or omissions of the Contractor or its employees, subcontractors, or agents. Upon the discovery of such security breach, the Contractor shall take reasonable steps to remediate the cause or causes of such breach, and shall provide notice to the Department of such steps. In the event of such breach of security, without limiting any other right of the City, the City shall have the right to withhold further payments under this Agreement for the purpose of set-off in sufficient sums to cover the

costs of notifications and/or other actions mandated by any Law, or administrative or judicial order, to address the breach, and including any fines or disallowances imposed by the State or federal government as a result of the disclosure. The City shall also have the right to withhold further payments hereunder for the purpose of set-off in sufficient sums to cover the costs of credit monitoring services for the victims of such a breach of security by a national credit reporting agency, and/or any other commercially reasonable preventive measure. The Department shall provide the Contractor with written notice and an opportunity to comment on such measures prior to implementation. Alternatively, at the City's discretion, or if monies remaining to be earned or paid under this Agreement are insufficient to cover the costs detailed above, the Contractor shall pay directly for the costs, detailed above, if any.

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

D. The Contractor, and its officers, employees, and agents shall notify the Department, at any time either during or after completion or termination of this Agreement, of any intended statement to the press or any intended issuing of any material for publication in any media of communication (print, news, television, radio, Internet, etc.) regarding the services provided or the data collected pursuant to this Agreement at least twenty-four (24) hours prior to any statement to the press or at least five (5) business Days prior to the submission of the material for publication, or such shorter periods as are reasonable under the circumstances. The Contractor may not issue any statement or submit any material for publication that includes confidential information as prohibited by this Section 5.08.

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

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

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

Section 6.01 Copyrights

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

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

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

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

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

F. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-

exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.

Section 6.02 Patents and Inventions

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

Section 6.03 Pre-existing Rights

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

Section 6.04 Antitrust

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

ARTICLE 7 - INSURANCE

Section 7.01 Agreement to Insure

The Contractor shall not commence performing services under this Agreement unless and until all insurance required by this Article is in effect, and shall ensure continuous insurance coverage in the manner, form, and limits required by this Article throughout the term of the Agreement.

Section 7.02 Commercial General Liability Insurance

A. The Contractor shall maintain Commercial General Liability Insurance covering the Contractor as Named Insured and the City as an Additional Insured in the amount of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall protect the City and the Contractor from claims for property damage and/or bodily injury, including death that may arise

from any of the operations under this Agreement. Coverage under this insurance shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, and shall be "occurrence" based rather than “claims-made.”

B. Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recently issued ISO Form CG 20 10.

Section 7.03 Professional Liability Insurance

A. At the Department’s direction, if professional services are provided pursuant to this Agreement, the Contractor shall maintain and submit evidence of Professional Liability Insurance appropriate to the type(s) of such services to be provided under this Agreement in the amount of at least One Million Dollars (\$1,000,000) per claim. The policy or policies shall include an endorsement to cover the liability assumed by the Contractor under this Agreement arising out of the negligent performance of professional services or caused by an error, omission or negligent act of the Contractor or anyone employed by the Contractor.

B. All subcontractors of the Contractor providing professional services under this Agreement for which Professional Liability Insurance is reasonably commercially available shall also maintain such insurance in the amount of at least One Million Dollars (\$1,000,000) per claim, and the Contractor shall provide to the Department, at the time of the request for subcontractor approval, evidence of such Professional Liability Insurance on forms acceptable to the Department.

C. Claims-made policies will be accepted for Professional Liability Insurance. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If available as an option, the Contractor shall purchase extended reporting period coverage effective on cancellation or termination of such insurance unless a new policy is secured with a retroactive date, including at least the last policy year.

Section 7.04 Workers’ Compensation, Disability Benefits, and Employer’s Liability Insurance

The Contractor shall maintain, and ensure that each subcontractor maintains, Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance in accordance with the Laws of the State on behalf of, or with regard to, all employees providing services under this Agreement.

Section 7.05 Unemployment Insurance

To the extent required by Law, the Contractor shall provide Unemployment Insurance for its employees.

Section 7.06 Business Automobile Liability Insurance

A. If vehicles are used in the provision of services under this Agreement, then the Contractor shall maintain Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles to be used in connection with this Agreement. Coverage shall be at least as broad as the most recently issued ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, the Business Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

Section 7.07 General Requirements for Insurance Coverage and Policies

A. All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the City Law Department.

B. All insurance policies shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

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

D. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. Any such self-insurance program shall provide the City with all rights that would be provided by traditional insurance required under this Article, including but not limited to the defense obligations that insurers are required to undertake in liability policies.

E. The City's limits of coverage for all types of insurance required under this Article shall be the greater of (i) the minimum limits set forth in this Article or (ii) the limits provided to the Contractor as Named Insured under all primary, excess, and umbrella policies of that type of coverage.

Section 7.08 Proof of Insurance

A. For Workers' Compensation Insurance, Disability Benefits Insurance, and Employer's Liability Insurance, the Contractor shall file one of the following within ten (10) Days of award of this Agreement. ACORD forms are not acceptable proof of workers' compensation coverage.

1. C-105.2 Certificate of Workers' Compensation Insurance;

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2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City.

B. For each policy required under this Agreement, except for Workers' Compensation Insurance, Disability Benefits Insurance, Employer's Liability Insurance, and Unemployment Insurance, the Contractor shall file a Certificate of Insurance with the Department within ten (10) Days of award of this Agreement. All Certificates of Insurance shall be (a) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) accompanied by the endorsement in the Contractor's general liability policy by which the City has been made an additional insured pursuant to Section 7.02(B). All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form attached to this Appendix A or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable, until such time as the complete policies have been issued, at which time such policies shall be submitted.

C. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Article. Such Certificates of Insurance shall comply with the requirements of Section 7.08 (A) and Section 7.08(B), as applicable.

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

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

F. In the event the Contractor receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated for any reason, the Contractor shall immediately forward a copy of such notice to both the Commissioner, New York City Department of Homeless Services, 33 Beaver Street, New York, New York 10004 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007.

Section 7.09 Miscellaneous

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

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

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

D. The Contractor waives all rights against the City, including its officials and employees for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Contractor and/or its subcontractors in the performance of this Agreement.

E. In the event the Contractor requires any subcontractor to procure insurance with regard to any operations under this Agreement and requires such subcontractor to name the Contractor as an additional insured under such insurance, the Contractor shall ensure that such entity also name the City, including its officials and employees, as an additional insured with coverage at least as broad as the most recently issued ISO form CG 20 26.

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

Section 8.01 Reasonable Precautions

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

Section 8.02 Protection of City Property

The Contractor assumes the risk of, and shall be responsible for, any loss or damage to City property, including property and equipment leased by the City, used in the performance of this Agreement, where such loss or damage is caused by any tortious act, or failure to comply with the provisions of this Agreement or of Law by the Contractor, its officers, employees, agents or subcontractors.

Section 8.03 Indemnification

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

Section 8.04 Infringement Indemnification

The Contractor shall defend, indemnify and hold the City harmless from any and all claims (even if the allegations of the lawsuit are without merit) or judgments for damages and from costs and expenses to which the City may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by the Contractor of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Contractor and/or its subcontractors in the performance of this Agreement. The Contractor shall defend, indemnify, and hold the City harmless regardless of whether or not the alleged infringement arises out of compliance with the Agreement's scope of services/scope of work. Insofar as the facts or Law relating to any claim would preclude the City from being completely indemnified by the Contractor, the City shall be partially indemnified by the Contractor to the fullest extent permitted by Law.

Section 8.05 Indemnification Obligations Not Limited By Insurance Obligation

The indemnification provisions set forth in this Article shall not be limited in any way by the Contractor's obligations to obtain and maintain insurance as provided in this Agreement.

Section 8.06 Actions By or Against Third Parties

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

B. The Contractor shall report to the Department in writing within five (5) business Days of the initiation by or against the Contractor of any legal action or proceeding in connection with or relating to this Agreement.

Section 8.07 Withholding of Payments

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

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

C. The City shall not, however, impose a setoff in the event that an insurance company that provided liability insurance pursuant to Article 7 above has accepted the City's tender of the claim or action without a reservation of rights.

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

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

Section 8.08 No Third Party Rights

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

ARTICLE 9 - CONTRACT CHANGES

Section 9.01 Contract Changes

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

Section 9.02 Changes Through Fault of Contractor

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

ARTICLE 10 - TERMINATION, DEFAULT, AND REDUCTIONS IN FUNDING

Section 10.01 Termination by the City Without Cause

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

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

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

A. This Agreement is funded in whole or in part by funds secured from the federal, State and/or City governments. Should there be a reduction or discontinuance of such funds by action of the federal, State and/or City governments, the City shall have, in its sole discretion, the right to terminate this Agreement in whole or in part, or to reduce the funding and/or level of services of this Agreement caused by such action by the federal, State and/or City governments, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable

staff or staff-hours, and corresponding reductions in the budget of this Agreement and in the total amount payable under this Agreement. Any reduction in funds pursuant to this Section shall be accompanied by an appropriate reduction in the services performed under this Agreement.

B. In the case of the reduction option referred to in Paragraph A, above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than thirty (30) Days from the date of such notice. Prior to sending such notice of reduction, the Department shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven (7) Days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the Department shall not be bound to utilize any of the Contractor's suggestions and that the Department shall have sole discretion as to how to effectuate the reductions.

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

D. To the extent that the reduction in public funds is a result of the State determining that the Contractor may receive medical assistance funds pursuant to title eleven of article five of the Social Services Law to fund the services contained within the scope of a program under this Agreement, then the notice and effective date provisions of this section shall not apply, and the Department may reduce such public funds authorized under this Agreement by informing the Contractor of the amount of the reduction and revising attachments to this agreement as appropriate.

Section 10.03 Contractor Default

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

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

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

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

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially

involved in its activities are indicted or convicted after execution of the Agreement under any state or federal law of any of the following:

- a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
- b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
- c. a criminal violation of any state or federal antitrust law;
- d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;
- e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
- f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.

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

6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.

B. The right to declare the Contractor in default shall be exercised by sending the Contractor a written notice of the conditions of default, signed by the Commissioner, setting forth the ground or grounds upon which such default is declared (“Notice to Cure”). The Contractor shall have ten (10) Days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Agreement pending the outcome of the default proceedings pursuant to this Section.

C. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default pursuant to this Section. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Commissioner shall give the Contractor an opportunity to be heard upon not less than five (5) business days notice. The Commissioner may, in his or her discretion, provide for such

opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.

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

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

Section 10.04 Force Majeure

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

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

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

Section 10.05 Procedures for Termination

A. The Department and/or the City shall give the Contractor written notice of any termination of this Agreement. Such notice shall specify the applicable provision(s) under which the Agreement is terminated and the effective date of the termination. Except as otherwise provided in this Agreement, the notice shall comply with the provisions of this Section. For termination without cause, the effective date of the termination shall not be less than ten (10) Days from the date the notice is personally delivered, or fifteen (15) Days from the date the notice is either sent by certified mail, return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. In the case of termination for default, the effective date of the termination shall be as set forth above for a termination without cause or such earlier date as the Commissioner may determine. If the City terminates the Agreement in part, the Contractor shall continue the performance of the Agreement to the extent not terminated.

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

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

Section 10.06 Miscellaneous Provisions

A. The Commissioner, in addition to any other powers set forth in this Agreement or by operation of Law, may suspend, in whole or in part, any part of the services to be provided under this Agreement whenever in his or her judgment such suspension is required in the best interest of the City. If the Commissioner suspends this Agreement pursuant to this Section, the City shall not incur or pay any further obligation pursuant to this Agreement beyond the suspension date until such suspension is lifted. The City shall pay for services provided in

accordance with this Agreement prior to the suspension date. In addition, any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of suspension and falling due during the suspension period shall be paid by the City in accordance with the terms of this Agreement.

B. Notwithstanding any other provisions of this Agreement, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of the Contractor's breach of the Agreement, and the City may withhold payments to the Contractor for the purpose of set-off in the amount of damages due to the City from the Contractor.

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

ARTICLE 11 - PROMPT PAYMENT AND ELECTRONIC FUNDS TRANSFER

Section 11.01 Prompt Payment

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

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

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

Section 11.02 Electronic Funds Transfer

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

Contractor to facilitate the electronic funds transfer shall remain confidential to the fullest extent provided by Law.

B. The Agency Head may waive the application of the requirements of this Section to payments on contracts entered into pursuant to Charter § 315. In addition, the commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the Agency may waive the requirements of this Section for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the best interest of the City.

C. This Section is applicable to contracts valued at Twenty-Five Thousand Dollars (\$25,000) and above.

ARTICLE 12 - CLAIMS

Section 12.01 Choice of Law

This Agreement shall be deemed to be executed in the City and State of New York, regardless of the domicile of the Contractor, and shall be governed by and construed in accordance with the Laws of the State of New York (notwithstanding New York choice of law or conflict of law principles) and the Laws of the United States, where applicable.

Section 12.02 Jurisdiction and Venue

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

Section 12.03 Resolution of Disputes

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

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

2. For construction and construction-related services this Section shall apply only to disputes about the scope of work delineated by the Agreement, the interpretation of Agreement documents, the amount to be paid for extra work or disputed work performed in connection with the Agreement, the conformity of the Contractor's work to the Agreement, and the acceptability and quality of the Contractor's work; such disputes arise when the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head makes a determination with which the Contractor disagrees. For construction, this Section shall not apply to termination of the Agreement for cause or other than for cause.

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

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

D. Presentation of Dispute to Agency Head.

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

2. Agency Head Inquiry. The Agency Head shall examine the material and may, in his or her discretion, convene an informal conference with the Contractor and the ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, to resolve the issue by mutual consent prior to reaching a determination. The Agency Head may seek such technical or other expertise as he or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as he or she deems fit. The Agency Head's ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the dispute presented, whether or not the Agency Head participated therein. The Agency Head may or, at the request of any party to the dispute, shall compel the participation of any other contractor with a contract related to the work of this Agreement and that contractor shall be bound by the decision of the Agency Head. Any contractor thus brought into the dispute resolution proceeding shall have the same rights and obligations under this Section as the Contractor initiating the dispute.

3. Agency Head Determination. Within thirty (30) Days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the Agency Head shall make his or her determination and shall deliver or send a copy of such determination to the Contractor and ACCO and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head, together with a statement concerning how the decision may be appealed.

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

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

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

2. Agency Response. Within thirty (30) Days of receipt of the Notice of Claim, the Agency shall make available to the Comptroller a copy of all material

submitted by the Agency to the Agency Head in connection with the dispute. The Agency may not present to the Comptroller any material not presented to the Agency Head, except at the request of the Comptroller.

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

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

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

1. the chief administrative law judge of the Office of Administrative Trials and Hearings ("OATH") or his or her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this Section as may be necessary in the execution of the CDRB's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

2. the City Chief Procurement Officer ("CCPO") or his or her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

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

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

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

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

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

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

5. Notification of CDRB Decision. The CDRB shall send a copy of its decision to the Contractor, the ACCO, the Corporation Counsel, the Comptroller, the CCPO, and, in the case of construction or construction-related services, the City Engineer, City Resident Engineer, City Engineering Audit Officer, or other designee of the Agency Head. A decision in favor of the Contractor shall be subject to the prompt payment provisions of the PPB Rules. The required payment date shall be thirty (30) Days after the date the parties are formally notified of the CDRB's decision.

6. Finality of CDRB Decision. The CDRB's decision shall be final and binding on all parties. Any party may seek review of the CDRB's decision solely in the form of a challenge, filed within four months of the date of the CDRB's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Law and Rules. Such review by the court shall be limited to the question of whether or not the CDRB's decision was made in violation of lawful procedure, was affected by an error of Law, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the CDRB in accordance with PPB Rules § 4-09.

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

Section 12.04 Claims and Actions

A. Any claim against the City or Department based on this Agreement or arising out of this Agreement that is not subject to dispute resolution under the PPB Rules or this Agreement shall not be made or asserted in any legal proceeding, unless the Contractor shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims as provided in this Agreement.

B. No action shall be instituted or maintained on any such claims unless such action shall be commenced within six (6) months after the date of filing with the Comptroller of the certificate for the final payment under this Agreement, or within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.

Section 12.05 No Claim Against Officers, Agents or Employees

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

Section 12.06 General Release

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

Section 12.07 No Waiver

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

ARTICLE 13 - APPLICABLE LAWS

Section 13.01 PPB Rules

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

Section 13.02 All Legal Provisions Deemed Included

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

Section 13.03 Severability / Unlawful Provisions Deemed Stricken

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

Section 13.04 Compliance With Laws

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

Section 13.05 Americans with Disabilities Act (ADA)

A. This Agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 et seq. (“ADA”) and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this Agreement. If directed to do so by the Department to ensure the Contractor’s compliance with the ADA during the term of this Agreement, the Contractor shall prepare a plan (“Compliance Plan”) which lists its program site(s) and describes in detail, how it intends to make the services, programs and activities set forth in the scope of services herein readily accessible and usable by individuals with disabilities at such site(s). In the event that the program site is not readily accessible and usable by individuals with disabilities, contractor shall also include in the Compliance Plan, a description of reasonable alternative means and methods that result in making the services, programs or activities provided under this Agreement, readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, auditory or mobility disabilities. The Contractor shall submit the Compliance Plan to the ACCO for review within ten (10) Days after being directed to do so and shall abide by the Compliance Plan and implement any action detailed in the Compliance Plan to make the services, programs, or activities accessible and usable by the disabled.

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

Section 13.06 Voter Registration

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

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

1. The Contractor shall provide and distribute voter registration forms to all persons together with written applications for services, renewal, or recertification for services and change of address relating to such services. Such voter registration forms

shall be provided to the Contractor by the City. The Contractor should be prepared to provide forms written in Spanish or Chinese, and shall obtain a sufficient supply of such forms from the City.

2. The Contractor shall also include a voter registration form with any Contractor communication sent through the United States mail for the purpose of supplying clients with materials for application, renewal, or recertification for services and change of address relating to such services. If forms written in Spanish or Chinese are not provided in such mailing, the Contractor shall provide such forms upon the Department's request.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. display any political preference or party allegiance;

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

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

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

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

Section 13.07 Participation in an International Boycott

A. The Contractor agrees that neither the Contractor nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the federal Export Administration Act of 1979, as amended, 50 U.S.C. Appendix. §§ 2401 et seq., or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to, or conviction of, the Contractor or a substantially-owned affiliated company thereof, of participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the Comptroller may, at his or her option, render forfeit and void this Agreement.

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

Section 13.08 MacBride Principles

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

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

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

Section 13.09 Access to Public Health Insurance Coverage Information

A. Participating Agencies. Pursuant to Charter § 1069, if this Agreement is with a participating City agency and the Contractor is one to whom this Section applies as provided in Paragraph B of this Section, the Contractor hereby agrees to fulfill the obligations in Paragraph C of this Section. The participating City agencies are: the Administration for Children's Services; the City Clerk; the Commission on Human Rights; the Department for the Aging; the Department of Corrections; the Department of Homeless Services; the Department of Housing Preservation and Development; the Department of Juvenile Justice; the Department of Health

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and Mental Hygiene; the Department of Probation; the Department of Social Services/Human Resources Administration; the Taxi and Limousine Commission; the Department of Youth and Community Development; the Office to Combat Domestic Violence; and the Office of Immigrant Affairs.

B. **Applicability to Certain Contractors.** This Section shall be applicable to a Contractor operating pursuant to an Agreement which (i) is in excess of \$250,000 and (ii) requires such Contractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of its contractual obligation to such participating City agency. "Contractors" to whom this Section applies shall be deemed to include subcontractors if the subcontract requires the subcontractor to supply individuals with a written application for, or written renewal or recertification of services, or request for change of address form in the daily administration of the subcontractor's contractual obligation.

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

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

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

3. The Contractor will provide an opportunity for an individual requesting a written application for services, renewal or recertification for services or change of address form relating to the provision of services via the Internet to request a pamphlet, and will provide such pamphlet by United States mail or an Internet address where such pamphlet may be viewed or downloaded, to any person who indicates via the Internet that they wish to be sent a pamphlet.

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

5. The Contractor will comply with: (i) any procedures established by the participating City agency to implement Charter §1069; (ii) any determination of the commissioner or head of the participating City agency (which is concurred in by the commissioner of the Department of Health and Mental Hygiene) to exclude a program, in whole or in part, from the requirements of Charter § 1069; and (iii) any determination of the commissioner or head of the participating City agency (which is concurred in by the

commissioner of the Department of Health and Mental Hygiene) as to which Workforce Investment Act of 1998 offices providing workforce development services shall be required to fulfill the obligations under Charter § 1069.

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

Section 13.10 Distribution of Personal Identification Materials

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

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

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

ARTICLE 14 - MISCELLANEOUS PROVISIONS

Section 14.01 Conditions Precedent

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

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

Section 14.02 Merger

This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall

be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement, other than a written change, amendment or modification duly executed by both parties pursuant to Article 9 of this Appendix A.

Section 14.03 Headings

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

Section 14.04 Notice

A. The Contractor and the Department hereby designate the business addresses specified at the beginning of this Agreement as the places where all notices, directions, or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Either party may change its notice address at any time by an instrument in writing executed and acknowledged by the party making such change and delivered to the other party in the manner as specified below.

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

C. Nothing in this Section shall be deemed to serve as a waiver of any requirements for the service of notice or process in the institution of an action or proceeding as provided by Law, including the New York Civil Practice Law and Rules.

AFFIRMATION

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

Full name of Proposer or Bidder *[below]*

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

A - Individual or Sole Proprietorships

SOCIAL SECURITY NUMBER _____

B - Partnership, Joint Venture or other unincorporated organization

EMPLOYER IDENTIFICATION NUMBER _____

C - Corporation

EMPLOYER IDENTIFICATION NUMBER _____

By _____
Signature

Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act, the furnishing of Social Security numbers by bidders or proposers on City contracts is voluntary. Failure to provide a Social Security number will not result in a bidder's/proposer's disqualification. Social Security numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws, as well as to provide the City a means of identifying businesses seeking City contracts.

CERTIFICATION BY BROKER

[Pursuant to Article Seven of Appendix A, every Certificate of Insurance must be accompanied by either the following certification by the broker setting forth the following text and required information and signatures or complete copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.]

CERTIFICATION BY BROKER

The undersigned insurance broker represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects, and that the described insurance is effective as of the date of this Certification.

[Name of broker (typewritten)]

[Address of broker (typewritten)]

[Signature of authorized officer of broker]

[Name of authorized officer (typewritten)]

[Title of authorized officer (typewritten)]

[Contact Phone Number for Broker (typewritten)]

[Email Address of Broker (typewritten)]

Sworn to before me this

_____ day of _____, 201_

NOTARY PUBLIC

APPENDIX B

ARTICLE 1 — DEFINITIONS

Section 1.01 Definitions.

In addition to the definitions set forth in this Agreement, the following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Appendix B, be construed as follows, unless a different meaning is clear from the context:

A. “Facility” means temporary emergency shelter for homeless families with children located at **691 East 138th, Bronx, New York**.

B. “Family” or “Client” means families with children whom the Department refers to the Facility.

C. “Services” mean the services the Contractor shall provide to Clients of the Facility.

D. “Department Policies” mean policies and procedures established by the Department, including the Department’s Fiscal Manual.

E. “OTDA” means the New York State Office of Temporary and Disability Assistance.

F. “Part 900 Regulations” mean the regulations codified in Title 18, Part 900 of New York Codes, Rules and Regulations, 18 N.Y.C.R.R. § 900.1, *et. seq.*

G. “Operational Plan” means the operational plan established by the Contractor in accordance with Part 900 Regulations.

H. “Client Responsibility” or “Client Responsibility Procedure” refers to the Client Conduct and Responsibility Procedure established by the Department pursuant to 18 N.Y.C.R.R. § 352.35 and other applicable provisions of Law.

I. “HRA” means the New York City Human Resources Administration.

J. “ACS” means the New York City Administration for Children’s Services.

ARTICLE II — SCOPE OF WORK

Section 2.01 Facility. Contractor shall operate the Facility as a temporary emergency shelter for homeless families with a capacity of **95** units, unless otherwise agreed to in writing between the parties.

Section 2.02 Purpose. The parties acknowledge that shelter is not a home, but rather temporary emergency housing for homeless families experiencing a housing crisis and that Contractor’s primary obligation under this Agreement is to assist Families in obtaining permanent housing as quickly as possible.

Section 2.03 Applicable Standards. The Contractor shall perform all services under this Agreement and operate the Facility in accordance with this Agreement, Department Policies and Laws including, but not limited to, Part 900 Regulations and other applicable State regulations, in effect at the time such services are performed.

Section 2.04 Operational Plan.

A. The Contractor shall operate the Facility and provide Services to Families in accordance with the requirements of its Operational Plan.

B. The Contractor shall submit its Operational Plan for Department and OTDA approval prior to commencement of this Agreement.

C. In the event the Department and/or OTDA notifies the Contractor that the Operational Plan is not acceptable or raise questions about the Plan, the Contractor shall have ten (10) business days from the receipt of such notification, to amend and/or respond to questions about the Plan.

D. If the Contractor does not submit, amend or respond to questions about the Operational Plan within the times prescribed in this Section 2.04 of Appendix B, the Department, in its sole discretion, may withhold payment to the Contractor for each day it is late in responding to the Department and/or OTDA.

ARTICLE III — REFERRALS

Section 3.01 Source of Referrals. The Department shall be the sole source of referrals of Families to the Facility.

Section 3.02 Acceptance of Referrals. The Facility and the Contractor shall, in accordance with its Operational Plan, accept all Families referred to it by the Department and shall do so on a 24 hour, seven-day a week, 365-day a year basis.

ARTICLE IV — INTAKE AND ASSESSMENT

Section 4.01 Client Rights and Client Code of Conduct. Within 48 hours of a Family’s arrival at the Facility, and in accordance with the Department’s Client Conduct and Responsibility Procedure, Contractor staff (“Staff”) shall present, explain, and ask the Family’s head of household and other adult Family members to sign the Statement of Client Rights and Client Code of Conduct (“Client Code of Conduct”). As described in the Code, Staff shall (a) inform the Family of the

expectations for behavior in shelter and that they must comply with them; (b) explain that shelter is temporary and, therefore, the Family must perform all necessary steps to move to permanent housing as expeditiously as possible; and (c) explain that the Family's shelter may be discontinued if the Family fails to comply with the requirements of the Client Code of Conduct.

Section 4.02 Independent Living Plan. Within 48 hours of a Family's arrival at the Facility, Staff shall develop jointly with the Client an independent living plan ("ILP") setting forth the steps the Client must take to achieve self-sufficiency and relocate to permanent housing, as described in Article V, below.

Section 4.03 Income Savings Requirement. Within 48 hours of a Family's arrival at the Facility, the Staff shall explain the Income Savings Requirement ("ISR"), request that the Family provide documentation of their earned (employment) income to determine whether the Family is eligible for ISR, and inform the Family that if they are eligible for the program, they must comply with the program's requirements to save a specified amount of their earned income every month.

Section 4.04 Public Assistance. Within 48 business hours of a Family's arrival at the Facility, Staff shall refer all Families not on public assistance ("PA") to HRA for an assessment of their eligibility for PA.

ARTICLE V — INDEPENDENT LIVING PLAN

Section 5.01 Development. Staff shall work with each Client to develop an ILP that complies with applicable provisions of the Client Responsibility Procedure and provides the steps the Client must take, including the time frames to complete each step, in order to relocate to permanent housing as quickly as possible.

Section 5.02 Assistance. Staff shall assist the Client in implementing the ILP, including working closely with the Family and using appropriate case management to obtain evaluations and services designed to help the Family achieve permanent housing.

Section 5.03 Ongoing Review.

A. Staff shall meet with the Client every two (2) weeks to review the Family's compliance with the requirements of their ILP. At this bi-weekly meeting, Staff shall update or revise the ILP as necessary to reflect any changes in the Family's circumstances that may impact their relocation to permanent housing.

B. Staff shall meet each week to review, discuss and update the ILP of a Client who has infant children (*i.e.*, children six months old or younger) or an open ACS case.

C. At these weekly or bi-weekly meetings, Staff shall review the Client's compliance or non-compliance with the ILP and, in the event of non-compliance, inform the Client that

continued non-compliance may result in discontinuance of shelter.

D. Staff shall include a copy of the Client's ILP(s) in the Client's case record, and document in the case record the Client's progress, or lack of progress, toward transitioning into permanent housing, compliance or non-compliance with the ILP(s) and, in the case of non-compliance, warnings to the Client that continued non-compliance may result in discontinuance of shelter.

ARTICLE VI — EMPLOYMENT AND INCOME SUPPORTS

Section 6.01 Contractor Responsibilities. The Contractor shall assist the Client in obtaining the financial resources necessary to secure permanent housing by helping Clients to obtain employment and/or income supports as quickly as possible and to budget and save their income to pay for permanent housing.

Section 6.02 Employment.

A. For Clients who are on PA, the Contractor shall assist them in adhering to employment – related tasks, activities, timeframes and other requirements necessary for maintaining their eligibility for PA.

B. For Clients who are not eligible for PA, the Contractor shall assist them in seeking and securing employment and, if appropriate, job training.

C. The Contractor shall include in the ILP of Clients the requirement that they seek and obtain employment and, if appropriate, job training, as quickly as possible.

Section 6.03 Income Supports.

A. The Contractor shall assist a Client in applying for whatever income supports the Client may be eligible and in maintaining eligibility for such supports. These income supports include but are not limited to:

1. PA
2. Food Stamps
3. Social Security Income (SSI)
4. Social Security Disability Income (SSDI)
5. Veterans Benefits
6. Child Support
7. Unemployment Benefits
8. Medical Assistance
9. Tax Credits, including the Earned Income Tax Credit (EITC), Child Tax Credit (CTC) and Child Care Tax Credit (CCTC).

B. The Contractor shall include in the ILP of the Family the requirement to apply for income supports as quickly as possible and maintain their eligibility for them.

Section 6.04 Savings.

A. The Contractor shall assist Families in budgeting their income (earned and/or unearned) in order to save as much income as possible to pay for permanent housing.

B. The Contractor shall assist Families eligible for ISR in complying with the program's requirements and include in their ILP a requirement to comply with ISR.

C. The Contractor shall assist Families not eligible for ISR in developing an appropriate savings plan and include in their ILP a requirement to comply with their savings plan.

ARTICLE VII — SECURING PERMANENT HOUSING

Section 7.01 Contractor Responsibilities. The Contractor shall assist the Family in seeking and securing permanent housing.

Section 7.02 Assistance. The Contractor shall assist the Family in seeking and securing permanent housing by, among other things:

1. Advising a Family of their responsibility to seek and accept suitable permanent housing;
2. Assisting a Family in locating suitable permanent housing and advising a Family that they are also responsible for seeking additional apartments on their own;
3. Providing a Family with appropriate forms to document their housing efforts such as apartment search and rejection forms, verifying all housing rejections, including the reason for the rejection; and including all apartment search and rejection forms in the Family's case record;
4. Ensuring that all relevant housing applications are completed in an appropriate and timely manner and that a copy is retained in the Family's case record;
5. Documenting and following up on all of the Family's permanent housing applications and housing appointments;
6. Preparing a Family for housing interviews and accompanying a Family on housing searches where appropriate;
7. Securing an evaluation, when appropriate, of a Family member to determine whether the family member has a mental or physical condition that affects the suitability of a particular housing option; and
8. Including in the Family's ILP a requirement that they must seek and accept suitable permanent housing within a prescribed timeline.

ARTICLE VIII — CLIENT RESPONSIBILITY

Section 8.01 Enforcement of Client Responsibility. The parties recognize that the

purpose of Client Responsibility is to ensure that Families reside in a safe shelter environment and move expeditiously from temporary emergency shelter into permanent housing. The parties acknowledge that it is critical for shelter staff and shelter clients to adhere to their respective responsibilities under the Client Responsibility Procedure and work together in order to achieve this critical goal.

Section 8.02 Staff Responsibilities. The Contractor shall ensure that Staff carries out their responsibilities under the Client Responsibility Procedure.

Section 8.03 Client Responsibilities. The Contractor shall ensure that Staff assists Clients in carrying out their responsibilities under the Client Responsibility Procedure and holds Clients accountable for unreasonable failure to do so by issuing First ILP Violations or Sanctions in accordance with the requirements of the Procedure.

ARTICLE IX — OTHER SERVICES

Section 9.01 Information and Referral Services. The Contractor shall maintain a listing of local community agencies and programs the services of which may be of assistance to Clients in transitioning to permanent housing. Staff shall refer Families to such programs where appropriate.

Section 9.02 Child Care Services. The Contractor shall provide child care services through referral of Families to child care providers in the vicinity of the Facility. Child care services must comply with Part 900 Regulations and other applicable provisions of Law.

Section 9.03 Health Services.

A. In the event a Family referred to the Facility did not undergo a health screening at the Department's intake center for families with children, the Contractor shall refer such Family to a medical provider in the community for a health screening or emergency treatment as the case may be. The Contractor shall not be responsible for the costs of such services.

B. Rules of the Facility shall provide that clients with minor communicable or infectious diseases are allowed to remain in the Facility and be properly isolated within their residential units.

C. Clients with a generalized systemic communicable disease, or a readily communicable local infection, who cannot be properly isolated in the Facility, must be transferred by the Department to an appropriate medical facility or to another shelter facility which is designed to handle the client's condition.

D. The Contractor shall ensure that at least one staff on each shift is trained and certified to administer basic first aid.

Section 9.04 Food Services. The Contractor shall ensure that Families can conveniently

obtain three well-balanced meals daily either through provision of a cooking facility in each Family's unit or through provision of meals on site. For Facilities that have Department approval to provide meals on site, such Facilities shall comply with applicable provisions of the Part 900 Regulations concerning food services, including § 900.10 and § 900.13 of those Regulations, and with all applicable Laws regarding the provision of food services including, but not limited to, New York City Agency Food Standards, a copy of which is annexed as Exhibit 1 to this Appendix B.

Section 9.05 Recreational Services. The Contractor shall provide recreation services, either onsite or by referral to services offsite, to children residing in the Facility and shall purchase and keep an inventory of equipment needed for recreational activities.

ARTICLE X — CASE MANAGEMENT SYSTEM

Section 10.01 CTS. Until otherwise directed by the Department, the Contractor shall coordinate and document all case management services through the Department's Client Tracking System ("CTS").

Section 10.02 CARES. Upon the Department's direction, the Contractor shall participate in training on the Client Assistance Rehousing Enterprise System ("CARES") and coordinate and document all case management services through CARES.

ARTICLE XI — STAFFING, SUPERVISION AND MONITORING

Section 11.01. Staffing.

A. The Contractor shall be responsible for the recruitment of appropriate personnel, verification of credentials and references, background checks, and selection and hiring of all personnel necessary for the performance of this Agreement. The Contractor shall carry out these responsibilities in accordance with other applicable provisions of this Agreement, Part 900 Regulations, including § 900.11 of those Regulations, and other applicable Law. The Contractor shall maintain documentation indicating compliance with this subsection A of Section 11.01 of Appendix B, subject to inspection by the Department.

B. Staffing shall be as set forth in the budget, a copy of which is attached as Appendix C to this Agreement.

C. For prospective employees, the Contractor shall make written inquiry of the applicant's three (3) most recent prior employers, if applicable. The Contractor shall use its best efforts to obtain a response to such inquiries prior to placing employees on the payroll.

D. The Contractor shall require all prospective employees to complete an employment application. Such application shall include, but not be limited to, inquiries regarding prior criminal convictions, if any, the evaluation of which shall be in accordance with Article 23-A of the New

York State Correction Law. The Contractor shall maintain documentation indicating compliance with this subsection D of Section 11.01 of Appendix B.

E. The Contractor shall submit to the Department a list of its key employees in accordance with the requirements of this Agreement, including but not limited to this Agreement's Article VI — Personnel Practices and Records. In addition to the information required to be provided under Article VI, the Contractor shall submit home telephone numbers and a full job description, including education and prior employment experience of all such key employees.

F. The Contractor shall have the final right of approval over the selection of the Director of the Facility and the Facility's Director of Social Services, which approval shall not be unreasonably withheld. If at any time the Department is of the opinion that either of these Directors is not performing satisfactorily, it shall notify the Contractor and the Director shall not work at the Facility.

Section 11.02 Supervision. The Contractor shall ensure that Staff's supervision of the Facility and its Clients complies with all applicable provisions of this Agreement, Department Policies and Part 900 Regulations.

Section 11.03 Monitoring and Evaluations of the Contractor. The Department shall monitor and evaluate the performance of the Contractor under this Agreement at such times and in such manner as the Department reasonably deems appropriate. If an independent program evaluation of the Contractor is performed, the Contractor shall provide the Department with a copy of such evaluation within ten (10) days after receipt by the Contractor.

ARTICLE XII — EMERGENCIES, SAFETY AND SECURITY, AND FACILITY ACCESS

Section 12.01 Emergencies and Other Incidents. The Contractor shall handle, report and document emergencies and other incidents in accordance with applicable provisions of this Agreement, Department Policies, including the Department's Criteria for Reporting Incidents, and Part 900 Regulations.

Section 12.02 Safety and Security. Staff shall implement safety and security procedures in accordance with other applicable provisions of this Agreement, Department Policies, and Part 900 Regulations, including § 900.11 and § 900.12 of those Regulations.

Section 12.03 Facility Access. Applicable Law requires the Department and its shelter providers to protect the confidentiality of those who apply for and receive shelter or other public assistance benefits. Accordingly, the Department established and the Contractor shall comply with the Department's Facility Access Procedure in order to maintain the confidentiality of Clients, and to ensure that the resources within the Department's family shelter system are used solely to further the Department's core mission of providing temporary emergency shelter and housing placement

assistance to homeless families.

ARTICLE XIII — ENVIRONMENTAL STANDARDS

Section 13.01 Environmental Standards. The Contractor shall ensure that the Facility is in compliance with the environmental standards set forth in all applicable provisions of this Agreement, Department Policies, and Part 900 Regulations, including §900.5, §900.11 and §900.12 of those Regulations.

A. An appropriate unit shall be provided to each Family referred to the Facility. The Contractor shall provide minimum furnishings for each unit in accordance with § 900.12 of the Part 900 Regulations.

B. Staff shall conduct health and safety inspections of all Family units bi-weekly, except Staff shall conduct weekly inspections of the units of Families with newborns and/ or open ACS cases. Staff shall maintain documentation indicating their compliance with this subsection B of Section 13.01 of Appendix B, including findings and corrective action taken, subject to inspection by the Department.

Section 13.02. Use of Space. Space in the Facility shall be used exclusively for the purposes set forth in this Agreement.

Section 13.03 Operation and Maintenance. The Contractor shall operate and maintain the Facility in accordance with all applicable provisions of this Agreement, Department Policies, Part 900 Regulations, including § 900.12 of those Regulations, and all other applicable Laws.

A. Hiring of Superintendent/Maintenance Staff. The Contractor shall hire a qualified superintendent and maintenance staff for the Facility who have a satisfactory knowledge of building maintenance and meet the Department’s experience requirements. The Department reserves the right to approve the candidate selected by the Contractor for the Superintendent position. The Contractor shall submit to the Department for review a copy of the selected candidate’s resume. The Department shall notify the Contractor if the proposed candidate for Superintendent is acceptable within two (2) weeks of the submission. In the event the Department does not notify the Contractor within such two (2) week period that the proposed candidate is not acceptable, the proposed candidate shall be deemed approved by the Department to fill the Superintendent position.

B. Property Management Plan. The Contractor, not later than thirty (30) days after the execution of this Agreement, shall develop and submit to the Department for its written approval a draft Property Management Plan (“Plan”). The Plan shall outline the Contractor’s strategy for handling emergency repairs, set forth a schedule for providing preventive maintenance, and describe how the Contractor shall meet its responsibilities and obligations described in this Section 13.03 of Appendix B. The Plan shall include procedures for inspecting and documenting all areas of the Facility on a regular basis. The Contractor, not later than thirty (30) days from the execution of this

Agreement, shall also develop and submit to the Department for its written approval, an auditable system for recording and tracking all maintenance and repair functions. Upon approval from the Department, but not later than sixty (60) days from the execution of this Agreement, the Plan shall be deemed to be in full force and effect. The Plan shall serve as the guideline for the Contractor's maintenance of the Facility. Any changes to the Plan must conform to all requirements as set forth in this subsection B of Section 13.03 of Appendix B, including resubmission and approval of the Plan. Invoices related to the maintenance and repair of the Facility will not be processed without an approved Plan.

C. Contractor Maintenance/Repair Obligations.

1. The Contractor shall be responsible for the preventative, daily, corrective, interior and emergency maintenance and repair of the Facility. The Contractor's obligations in this regard include, but are not limited to: the maintenance of all mechanical systems (including HVAC, boiler, hot water, emergency generator, elevator and fire safety) and general plumbing, carpentry, electric, window screens, window glass, non-capital masonry, tile repair, door alarms, locks, grounds, equipment, and furnishings.
2. The Contractor shall be responsible for all repairs, major or minor, that are the result of the Contractor's negligence or the result of client vandalism that occurred because of the Contractor's negligent supervision of Clients.
3. The Contractor shall be responsible for curing all non-capital violations and deficiencies issued against the building in which the Facility is located after commencement of the Agreement. The Contractor shall immediately notify the Department of any such violations and provide the Department with a corrective action plan for curing non-capital violations, including time frames for curing these violations, and written notice once these violations have been cured.

D. Department Maintenance/Repair Obligations.

1. The Department shall be responsible for major structural repairs to the Facility and capital improvements to, and replacement of the major building systems, including HVAC, boilers, plumbing systems, elevators, roofing and exterior portions of the Facility. The Department may designate the Contractor to perform such repairs. The Department shall not be responsible for such repairs if they are the result of the Contractor's or its employees' or agents' contributory negligence or willful misconduct or are the Contractor's responsibility pursuant to this subsection D of Section 13.03 of Appendix B, in which case it shall be the Contractor's responsibility to make such repair. The Department shall consult with the Contractor before undertaking any exterior or structural repairs or capital improvements.

2. The Department shall remove any violations that are the Department's responsibility pursuant to subsection D.1 of this Section 13.03 of Appendix B unless such violations are the result of the Contractor's or its employees' or agents' contributory negligence or willful misconduct.

Section 13.04 Structural Changes. The Contractor shall consult with, and receive written approval from the Department before initiating any structural changes, including renovations and room reconfigurations, divisions or change in use.

ARTICLE XIV — EQUIPMENT AND FURNISHINGS

Section 14.01 Title, Maintenance and Disposal. The Contractor shall comply with all applicable provisions of this Agreement and Department Policies concerning title to, maintenance and disposal of equipment or other property.

Section 14.02 Inventory Maintenance Procedures. Within ten (10) days of the commencement of this Agreement the Contractor shall submit inventory maintenance procedures for Department approval. These procedures shall be designed to ensure that the Contractor maintains accurate records to account for all equipment, furnishings and supplies purchased with Department funds. The inventory maintenance procedures shall include, but not be limited to the following controls:

1. All goods received must be recorded in inventory records.
2. A receiving report shall be prepared for every item purchased and shall include but not be limited to evidence that someone counted the items received and physically inspected the items to ensure they were received in good condition. The person preparing the receiving report shall be an individual independent of the Contractor's purchasing function.
3. The receiving report shall be compared against the invoice to ensure that only items delivered are paid for.
4. Supplies shall be kept in a secured area; access to such area shall be restricted to only those employees authorized by the Program Director; and all inventory issuances shall be authorized by the Program Director or his/her designee (only one person may be designated for this function).
5. All equipment, furnishings and supplies shall be delivered directly to the Facility unless otherwise authorized by the Department in writing.
6. Contractor shall maintain and as necessary replace all furnishings and equipment, and shall furnish to the Department on a yearly basis an inventory of all furnishings and

equipment.

ARTICLE XV — OCCUPANCY AND PAYMENT

Section 15.01 Occupancy Rate. For those shelters with 31 or more units, the minimum occupancy rate is 95%. For those shelters with 10 to 30 units, the minimum occupancy rate is 90%. The minimum occupancy rate shall be calculated on an annual basis. The Contractor shall not operate a shelter in the Facility below the minimum occupancy rate applicable to the Facility without the prior written approval of the Department.

Section 15.02 Unit Availability. A unit shall be available within twenty-four (24) hours of the unit being vacated. This period may be extended, with the prior approval of the Department in the event repairs to the unit are required to make the unit habitable.

Section 15.03 Payment Rate.

A. The Department shall pay to the Contractor an amount not to exceed **\$72.76** per occupied unit, per day (“Rate”). The Rate shall be adjusted on an annual basis (beginning each City Fiscal Year) in accordance with the terms of the Department’s applicable performance investment program.

B. The Contractor acknowledges that the Rate is calculated to reimburse it for 100% of the Contractor’s approved costs to operate the Facility, based on the specified minimum occupancy threshold. Therefore, the Contractor shall not receive payment for occupied units that exceed 100% of the Contractor’s annual budget.

C. The Contractor expressly agrees and understands that the Department shall not pay the Contractor for any expense incurred for an unoccupied Unit.

Section 15.04 Payment.

A. The total amount to be paid during the term of this Agreement shall not exceed **\$8,829,870**. Payments to the Contractor shall be made in accordance with either the presently approved State daily rate or any other State approved method of payment for temporary, emergency housing. If the State rate changes during the term of this Agreement, the Department may change the rate to be paid under this Agreement.

B. The Contractor shall make no expenditures with funds provided under this Agreement except those properly incurred pursuant to and during the performance period of this Agreement.

C. Payment shall be made by the Department based upon the monthly submissions of invoices from the Contractor setting forth the occupancy of the Facility, on a daily basis, during the preceding month.

D. The Contractor and the Department shall review annually the amount of payments made pursuant to this Agreement to determine the appropriateness of the rate based on any increase in the cost of operating the Facility and enhancement of the Facility programs. Notwithstanding the above, the Department shall not reduce the above rate below that required to meet operating expenses.

ARTICLE XVI — COMMUNITY RELATIONS

Section 16.01 The Contractor shall form an advisory council to include Contractor's staff, Clients, and representatives from the community. The advisory council shall meet on a regular basis to address community issues arising from the Facility's operation.